

THIS IS A COURTESY COPY OF THE WATERFRONT DEVELOPMENT ACT, N.J.S.A. 12:5-1 ET SEQ. THE OFFICIAL VERSION IS PUBLISHED IN THE NEW JERSEY STATUTES. IF THERE ARE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE STATUTE, THE OFFICIAL VERSION WILL GOVERN.

“Waterfront Development Act”

UPDATED THROUGH P.L. 2016, ch.32, and JR 3 of 2016

12:5-1. Annual report on condition of water-front or harbor facilities; recommendations

The board of commerce and navigation shall investigate and report annually to the legislature the condition of water-front and harbor facilities and any other matter incident to the movement of commerce upon all navigable rivers and waters within this state or bounding thereon. The board shall also recommend to the legislature and to the various municipalities interested therein such measures as may, in the judgment of the board, be necessary or advisable for the preservation of proper navigation or its improvement or the improvement of commerce upon such waters.

12:5-2. Preventing encroachment on water front

The Department of Environmental Protection may, by appropriate action in any court, prevent the encroachment or trespass upon the water front of any of the navigable waters of this State or bounding thereon, or upon the riparian lands of this State, and compel the removal of any such encroachment or trespass, and restrain, prevent and remove any construction, erection or accretion injurious to the flow of any such waters, which may be detrimental to the proper navigation thereof and the maintenance and improvement of commerce thereon.

12:5-3 Department approval required for waterfront development; exemptions.

a. All plans for the development of any waterfront upon any navigable water or stream of this State or bounding thereon, which is contemplated by any person or municipality, in the nature of individual improvement or development or as a part of a general plan which involves the construction or alteration of a dock, wharf, pier, bulkhead, bridge, pipeline, cable, or any other similar or dissimilar waterfront development shall be first submitted to the Department of Environmental Protection. No such development or improvement shall be commenced or executed without the approval of the Department of Environmental Protection first had and received, or as hereinafter in this chapter provided.

b. The following are exempt from the provisions of subsection a. of this section:

(1) The repair, replacement or renovation of a permanent dock, wharf, pier, bulkhead or building existing prior to January 1, 1981, provided the repair, replacement or renovation does not increase the size of the structure and the structure is used solely for residential purposes or the docking or servicing of pleasure vessels;

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(2) The repair, replacement or renovation of a floating dock, mooring raft or similar temporary or seasonal improvement or structure, provided the improvement or structure does not exceed in length the waterfront frontage of the parcel of real property to which it is attached and is used solely for the docking or servicing of pleasure vessels; and

(3) Development in the coastal area, as defined in section 4 of P.L.1973, c.185 (C.13:19-4), landward of the mean high water line of any tidal waters.

c. Notwithstanding the provisions of any law, rule, or regulation to the contrary, the Department of Environmental Protection shall not, as a condition of approval required pursuant to subsection a. of this section, include solar panels in any calculation of impervious surface or impervious cover.

As used in this subsection, "solar panel" means an elevated panel or plate, or a canopy or array thereof, that captures and converts solar radiation to produce power, and includes flat plate, focusing solar collectors, or photovoltaic solar cells and excludes the base or foundation of the panel, plate, canopy, or array.

d. The Department of Environmental Protection may, as a condition of an approval required pursuant to subsection a. of this section, and pursuant to standards established by rule or regulation adopted pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), require a person or municipality to provide on-site public access to the waterfront and adjacent shoreline, or off-site public access to the waterfront and adjacent shoreline if on-site public access is not feasible as determined by the department. Nothing in this subsection shall be construed to abrogate or otherwise affect any public access obligations or requirements of any approval, administrative order, consent decree, or court order in effect prior to the effective date of P.L.2015, c.260.

12:5-5. Procedure when water front is under control of local governing body

Where such water front is under the control of a local board, commission or other governing body created by legislative act, having power to improve or develop the water front or exercising such authority, so that a permit or license must be granted by it before any improvement or development may be commenced, plans proposed by it or submitted to it shall be filed with the board of commerce and navigation.

The board may, within ten days after the receipt by it of such plans, file notice of objections to the carrying out of the improvement or development, or to the granting of a permit or license by

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such local governing body. The filing of the notice shall act as a stay in the carrying out of the plans or in the granting of such permit or license until a public hearing shall have been held by the local governing body sitting jointly with the board. At the hearing the board may state its objections to the plans and recommend such changes as it may deem necessary.

The local governing body together with the board shall approve or disapprove the plans, or grant or refuse to grant the permit or license as seems necessary or desirable.

12:5-6 Actions for violations.

12:5-6. a. Any development or improvement enumerated in R.S.12:5-3 and in P.L.1975, c.232 (C.13:1D-29 et al.) or included within any rule or regulation adopted pursuant thereto, which is commenced or executed without first obtaining approval, or contrary to the conditions of approval, as provided in R.S.12:5-3 and in P.L.1975, c.232 (C.13:1D-29 et al.), or any rule or regulation adopted, or permit or order issued pursuant thereto, shall be deemed to be a violation under this section.

b. Whenever, on the basis of available information, the commissioner finds that a person is in violation of any provision of R.S.12:5-3 or P.L.1975, c.232 (C.13:1D-29 et al.), or any rule or regulation adopted, or permit or order issued pursuant thereto, the commissioner may:

- (1) Issue an order requiring any such person to comply in accordance with subsection c. of this section; or
- (2) Bring a civil action in accordance with subsection d. of this section; or
- (3) Levy a civil administrative penalty in accordance with subsection e. of this section; or
- (4) Bring an action for a civil penalty in accordance with subsection f. of this section; or
- (5) Petition the Attorney General to bring a criminal action in accordance with subsection g. of this section.

Recourse to any of the remedies available under this section shall not preclude recourse to any of the other remedies.

c. Whenever, on the basis of available information, the commissioner finds a person in violation of any provision of R.S.12:5-3 or P.L.1975, c.232 (C.13:1D-29 et al.), or any rule or

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regulation adopted, or permit or order issued pursuant thereto, the commissioner may issue an order: (1) specifying the provision or provisions of R.S.12:5-3 or P.L.1975, c.232 (C.13:1D-29 et al.), or the rule, regulation, permit or order of which the person is in violation; (2) citing the action which constituted the violation; (3) requiring compliance with the provision or provisions violated; (4) requiring the restoration to address any adverse effects resulting from the violation; and (5) providing notice to the person of the right to a hearing on the matters contained in the order.

d. The commissioner is authorized to institute a civil action in Superior Court for appropriate relief from any violation of any provisions of R.S.12:5-3 or P.L.1975, c.232 (C.13:1D-29 et al.), or any rule or regulation adopted, or permit or order issued pursuant thereto. Such relief may include, singly or in combination:

- (1) A temporary or permanent injunction;
- (2) Recovery of reasonable costs of any investigation, inspection, or monitoring survey which led to the discovery of the violation, and for the reasonable costs of preparing and bringing a civil action commenced under this subsection;
- (3) Recovery of reasonable costs incurred by the State in removing, correcting, or terminating the adverse effects resulting from any violation for which a civil action has been commenced and brought under this subsection;
- (4) Recovery of compensatory damages for any loss or destruction of natural resources, including but not limited to, wildlife, fish, aquatic life, habitat, plants, or historic or archeological resources, and for any other actual damages caused by any violation for which a civil action has been commenced and brought under this subsection. Recovery of damages and costs under this subsection shall be paid to the State Treasurer;
- (5) An order requiring the violator restore the site of the violation to the maximum extent practicable and feasible or, in the event that restoration of the site of the violation is not practicable or feasible, provide for off-site restoration alternatives as approved by the department.

e. The commissioner is authorized to assess a civil administrative penalty of not more than \$25,000 for each violation of the provisions of R.S.12:5-3 or P.L.1975, c.232 (C.13:1D-29 et al.), or any rule or regulation adopted, or permit or order issued pursuant thereto, and each day during which each violation continues shall constitute an additional, separate, and distinct offense. Any amount assessed under this subsection shall fall within a range established by

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regulation by the commissioner for violations of similar type, seriousness, duration and conduct; provided, however, that prior to the adoption of the regulation, the commissioner may, on a case-by-case basis, assess civil administrative penalties up to a maximum of \$25,000 per day for each violation, utilizing the criteria set forth herein. In addition to any administrative penalty assessed under this subsection and notwithstanding the \$25,000 maximum penalty set forth above, the commissioner may assess any economic benefits from the violation gained by the violator. Prior to assessment of a penalty under this subsection, the property owner or person committing the violation shall be notified by certified mail or personal service that the penalty is being assessed. The notice shall identify the section of the statute, regulation, or order or permit condition violated; recite the facts alleged to constitute a violation; state the basis for the amount of the civil penalties to be assessed; and affirm the rights of the alleged violator to a hearing. The ordered party shall have 35 days from receipt of the notice within which to deliver to the commissioner a written request for a hearing. After the hearing and upon finding that a violation has occurred, the commissioner may issue a final order after assessing the amount of the fine specified in the notice. If no hearing is requested, the notice shall become a final order after the expiration of the 35-day period. Payment of the assessment is due when a final order is issued or the notice becomes a final order. The authority to levy an administrative order is in addition to all other enforcement provisions in R.S.12:5-3 or P.L.1975, c.232 (C.13:1D-29 et al.), and the payment of any assessment shall not be deemed to affect the availability of any other enforcement provisions in connection with the violation for which the assessment is levied. The department may compromise any civil administrative penalty assessed under this section in an amount and with conditions the department determines appropriate. A civil administrative penalty assessed, including any portion thereof required to be paid pursuant to a payment schedule approved by the department, which is not paid within 90 days of the date that payment of the penalty is due, shall be subject to an interest charge on the amount of the penalty, or portion thereof, which shall accrue as of the date payment is due. If the penalty is contested, no additional interest charge shall accrue on the amount of the penalty until 90 days after the date on which a final order is issued. Interest charges assessed and collectible pursuant to this subsection shall be based on the rate of interest on judgments provided in the New Jersey Rules of Court.

f. A person who violates any provision of R.S.12:5-3 or P.L.1975, c.232 (C.13:1D-29 et al.), or any rule or regulation adopted, or permit or order issued pursuant thereto, or an administrative order issued pursuant to subsection c. of this section, or a court order issued pursuant to subsection d. of this section, or who fails to pay a civil administrative penalty in full pursuant to subsection e. of this section, or who fails to make a payment pursuant to a penalty payment schedule entered into with the department, or who knowingly makes any false or misleading statement on any application, record, report, or other document required to be submitted to the department, shall be subject, upon order of a court, to a civil penalty not to exceed \$25,000 per day of the violation, and each day during which the violation continues shall

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constitute an additional, separate, and distinct offense. Any civil penalty imposed pursuant to this subsection may be collected with costs in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). In addition to any penalties, costs or interest charges, the court may assess against the violator the amount of economic benefit accruing to the violator from the violation.

g. A person who purposely, knowingly or recklessly violates any provision of R.S.12:5-3 or P.L.1975, c.232 (C.13:1D-29 et al.), or any rule or regulation adopted, or permit or order issued pursuant thereto, shall be guilty, upon conviction, of a crime of the third degree and shall, notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, be subject to a fine of not less than \$5,000 nor more than \$50,000 per day of violation, or by imprisonment, or both. A person who purposely, knowingly or recklessly makes a false statement, representation, or certification in any application, record, or other document filed or required to be maintained under any provision of R.S.12:5-3 or P.L.1975, c.232 (C.13:1D-29 et al.), or any rule or regulation adopted, or permit or order issued pursuant thereto, or who falsifies, tampers with or purposely, knowingly or recklessly renders inaccurate, any monitoring device or method required to be maintained pursuant to R.S.12:5-3 or P.L.1975, c.232 (C.13:1D-29 et al.), or any rule or regulation adopted, or permit or order issued pursuant thereto, shall be guilty, upon conviction, of a crime of the third degree and shall, notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, be subject to a fine of not more than \$50,000 per day of violation, or by imprisonment, or both.

h. Each applicant or permittee shall provide, upon the request of the department, any information the department requires to determine compliance with the provisions of R.S.12:5-3 or P.L.1975, c.232 (C.13:1D-29 et al.), or any rule or regulation adopted, or permit or order issued pursuant thereto.

12:5-7. Municipal developments begun prior to April 8, 1914

Sections 12:5-3 to 12:5-6 of this title shall not apply to or affect any development for docks, shipping and transportation facilities inaugurated by a municipality and under construction in whole or in part prior to April eighth, one thousand nine hundred and fourteen, provided the municipality had, prior to said date, filed with the secretary of state a map showing the lands proposed to be taken for such municipal development.

12:5-8. Preparation of plans by board upon request of county or municipality; charges

Upon the request of a county, municipality or other political subdivision of this state, the board shall prepare and submit a proper plan for the development and improvement of the water front of such political subdivision upon any navigable stream or waters of this state or bounding

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thereon, the navigation of the waters incident thereto, and the regulation and improvement of the traffic of commerce incident thereto.

For the preparation and submission of the plans the board may make such charge against the municipality requesting the same as is equal to the actual cost thereof and the political subdivision requesting them is hereby authorized to pay the same from any funds in its treasury.

12:5-9. Harbor of refuge in Sandy Hook bay

In addition to the powers conferred by the provisions of the act to which this act is a supplement, the Board of Commerce and Navigation is hereby authorized and empowered to cooperate with the Federal government, the county of Monmouth, and the borough of Atlantic Highlands in providing and maintaining a harbor of refuge in Sandy Hook bay near the borough of Atlantic Highlands.

12:5-10. Marine improvements on lands conveyed to State by municipalities

Whenever a municipality of this State has or shall have conveyed lands to the State upon the condition that the State shall improve such lands by constructing thereon docks, basins or other marine accommodations of the Marina type for boats and vessels, the cost of each such marine improvement shall be borne equally by the State and the municipality making such conveyance.

12:5-11. Appropriation for State's share of marine improvement

In the case of any such conveyance heretofore made, there is hereby appropriated from the General Funds of the State, such sum as may be included in any general or supplemental appropriation act, for payment of the State's share for the said marine improvement of the lands so heretofore conveyed to the State.