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At Issue

DEP Waterfront Rule: Public Access or Business Tax?

The NJ Department of Environmental Protection's (DEP) controversial beach-access rule raises a fundamental issue of fairness. Should all property owners whose land fronts tidal waterways in New Jersey be forced to provide "waterfront access" to the public? Or, if they cannot provide that access, should they be compelled to pay a tax to the DEP to provide that access elsewhere? This is the choice property owners face under this rule—provide access or pay a tax.

Owners of marinas and other business properties were understandably upset when the DEP adopted this rule in 2007. Fortunately, the Legislature and Governor, at NJBIA's urging, recently took a step in the right direction by enacting a law exempting marinas from the requirement for two years while a task force studies the issue. While this only affected one important segment of the business community, it was recognition of the unnecessary negative impacts this rule can have.

NJBIA is pushing for another bill, now making its way through the Legislature, which would exempt industrial plants, chemical companies, utilities and ports. The reasoning is that these facilities, as a practical or legal matter, such as homeland security, are required to keep people out.

Placing an unattainable requirement on business, with the only alternative being to pay a tax to the DEP, is unfair and runs counter to everything the state is trying to do to help businesses expand and create new jobs in this economic downturn.

Prior to the rule, public access was required in most cases, but there was a feasibility test. If access was not feasible or practical, such requirements would not be mandated. This made sense. However, under the new rule, all flexibility was removed and the state's position became a "pay or pay" solu-

tion in which a company must either pay for access to be provided on-site or pay to have the DEP provide access elsewhere.

In our comments opposing the rule, NJBIA asserted that it was really a de-facto tax on business. Furthermore, unlike other taxes, which are based on a formula, there are no guidelines stating what a company is supposed to pay, what that money will be used for, or if that money will go for public access at all. Even more disconcerting, there is no guarantee that a company won't be hit with this tax over and over and over again.

We must remember that industrial, chemical, energy and port facilities provide property tax revenues, sales tax revenues, corporate business tax revenues, and jobs—jobs that also produce income-tax revenues. Many of these companies have been in New Jersey for decades and are the backbone of the State's economy. A new tax via regulation is not the way to treat these businesses at a time like this and it is not good public policy.

One can understand why the DEP would want to provide public access to our beaches, but the rule evolved into something much broader. We must balance the desire for public access with the security of facilities that, if compromised, could have potentially disastrous results. We must also question rules that place new taxes or other financial burdens on New Jersey companies, especially when the country is in an economic crisis and the state is already losing jobs. And we must take a common sense approach toward rule making so we do not create one-size-fits-all mandates that do little to benefit the public or the environment, but add costly burdens to companies that provide badly needed jobs.

The Governor and the Legislature are finally taking positive steps in an attempt to shore up the state economy and help businesses survive in these difficult times. The DEP and other state agencies must start working off the same plan. If not, they will undermine all the good work now being done. ❧