

January 21, 2007

Honorable Michael J. Panter, Assemblyman, 12<sup>th</sup> District  
Vice Chair, Financial Institutions and Insurance Committee  
167 Avenue of the Common  
Suite 7  
Shrewsbury, NJ 07702

Re: Assembly bill #3236 - "New Jersey Consumer Catastrophe Preparedness and Protection Act"

Dear Assemblyman Panter:

Thank you for the opportunity to testify on the subject proposed legislation on January 18, 2007. As indicated in testimony, I would like to provide information of relevance to the bill for the Committee's consideration.

Accordingly, attached please find the following documents. I will excerpt portions of these documents and briefly discuss how they could inform various amendments to the subject bill, as well as pending global warming (A3301/S2114) legislation, and current Municipal Land Use Law (MLUL) and the Coastal Area Facilities Review Act (CAFRA). We strongly believe global warming and land use reforms are vital prevention measures that are integral to the financial risks the subject bill seeks to mitigate.

- **Section 309 Coastal Assessment** – Department of Environmental Protection (DEP), February 2006. excerpt of Coastal Hazards section;
- **“Proposal for a High Level Summit to Address Fiscal Impacts of Global Climate Change And Sea Level Rise in New Jersey”** (memorandum to Governor Corzine from the Commissioners of DEP and Department of Banking and Insurance – April 12, 2006)
- **“Financial Risks and Opportunities of Climate Changes”** (memorandum from DEP Commissioner Jackson to Banking and Insurance Commissioner Goldman – April 3, 2006)
- **“Summit: Confronting Global Climate Change in New Jersey”** (invitation letter from Governor Corzine – August 3, 2006. Agenda, goals, and invitees)

## **NJDEP Section 309 Coastal Assessment findings**

DEP's Section 309 Assessment documents serious threats to the NJ coast and makes troubling findings. According to DEP, significant threats to life and property continue to increase as a result of global warming and poorly planned and inadequately regulated coastal development. Contrary to the January 18, 2007 insurance industry testimony on the subject bill, these causal risk factors are man made and can not be accurately described as "acts of god" or "natural disasters". Worse, DEP has concluded that efforts to manage and reduce these risks are not effective and that impediments to solving these problems remain due to, and I quote:

**lobbying efforts of special interest groups, legal challenges to DEP permit decisions, provision of flood insurance through the National Flood Insurance Program, and public perception that large-scale beach nourishment projects eliminate vulnerability to coastal hazards** (emphasis supplied).

I've served at DEP for 13 years, including 4 years as a Legislative Analyst, and frankly, I must say that it is rare for DEP to so bluntly identify the source of policy problems in a public document. Of these four identified impediments, remedies for three are legislative in nature and directly within the scope of your bill, A3236. As DEP notes, it is vital that the lobbying of special interests not be allowed to continue to undermine the broader public interest; that insurance schemes not continue to provide perverse incentives for inappropriate and poorly planned and regulated coastal development, and that public perceptions be informed by the best risk based science available.

Below are excerpts of the DEP 309 Assessment findings with respect to coastal hazards:

"While the precise rate of sea level rise is uncertain, current models indicate that global warming will cause the rate to increase. Recent projections forecast that relative sea level rise at the New Jersey coast will be between 0.31 m and 1.10 m by 2100. The approximate central value of this range, 0.71 m is more than twice the rise that occurred during the last century. This increase would result in the threat of more sustained extreme storm surges, increased coastal erosion, escalating inundation of coastal wetlands and saline intrusion.

Many parts of New Jersey's densely populated coastal area are highly susceptible to the effects of the following coastal hazards: flooding, storm surge, episodic erosion, chronic erosion, sea level rise, and extra-tropical storms. Reconstruction of residential development and the conversion of single family dwellings into multi-unit dwellings continues in hazardous areas... the value of property at risk is increasing significantly. With anticipated accelerating sea level rise and increasing storm frequency and intensity, vulnerability to the risks of coastal hazards will not abate; it will only become more costly.

...Development in areas suited to the inland migration of coastal wetlands serves to preclude this adaptation and the wetlands will either diminish in extent or will be lost to inundation. ...

All of the impediments to meeting this 309 programmatic objective that appeared in the last New Jersey Coastal Zone Section 309 Assessment and Strategy remain. These include lobbying efforts of special interest groups, legal challenges to DEP permit decisions, provision of flood insurance through the National Flood Insurance Program, and public perception that large-scale beach nourishment projects eliminate vulnerability to coastal hazards.

...in certain instances, structural engineering solutions will not be practical or economically feasible. In these cases future public and private development and redevelopment must be directed away from the hazardous areas. While some derogatorily refer to this option as "retreat," from the perspective of sound planning based on the best available science, the concept actually involves "strategic adjustment." Prudent planning requires that we expand upon the existing studies of the societal, economic, and environmental costs of possible mitigative actions while the greatest number of alternatives exist.

...

The state's coastal area continues to experience substantial seasonal and residential population increases. Conversion of formerly seasonal homes to year-round residences continues unabated. In many instances, formerly modest houses are replaced with significantly more expensive homes while property values continue to escalate.

At the same time, risks associated with coastal hazards continue to increase. Factors such as escalating sea level rise and cyclical and possibly long-term increases in storm frequency and intensity threaten both the natural environment and built environment of New Jersey's coast. Consequently, the ranking of the Coastal Hazards Section 309 enhancement area remains a high priority with the NJCMP.

**These are alarming findings that warrant a serious and aggressive State level legislative and regulatory response.**

However, in spite of these regional and significant risks to life, property, and the State's economy, the State level policy response appears reliant on voluntary DEP regional coastal land use coordination and local initiative via local hazard mitigation planning. According to DEP, limited local efforts are driven by the Federal Disaster Mitigation Act of 2000 and the applicable Interim Final Rules, under which New Jersey's Office of Emergency Management has developed a program regarding hazard mitigation planning for municipalities. The program draws on guidance prepared by FEMA in the document, Multi-Hazard Mitigation Planning Guidance Under the Disaster Mitigation Act of 2000.

**The FEMA Katrina response and performance of the federal DHS has given us little confidence in this program.**

## Cabinet level warnings to Governor Corzine

Based upon the magnitude of these shore risk and the strength of DEP's 309 Assessment findings, in an April 12, 2006 memo, DEP Commissioner Jackson and Banking and Insurance Commissioner Goldman **warned Governor Corzine** that:

*“Global climate change is predicted to have a pronounced impact on New Jersey. Changes are already occurring. Rising ambient temperatures are expected to effect the health of our citizens. ...Sea level rise is expected to accelerate and threaten New Jersey’s coastline. Higher sea levels will increase the severity of storm-related flooding is coastal and bay areas. In addition to significant property losses, sea level rise will adversely affect coastal ecosystems and may threaten fresh water supplies through salt water intrusion. With climate change, storm frequency and intensity is predicted to increase.”...*

*These are but a few of the results we can anticipate from climate change and we can also expect the changes to have serious consequences for New Jersey’s economy. In March, the National Association of Insurance Commissioners voted unanimously to establish as task force on climate change to examine the issues bearing on the insurance industry’s long term solvency. Late last year, New York State’s largest provider of homeowners insurance, Allstate, announced that it would no longer sell new homeowners insurance in NY City, Long Island and Westchester County. According to a company spokesperson, Allstate is studying whether to stop writing new policies in other parts of the country, particularly for properties in vulnerable shorefront areas.*

## Corzine Climate Change Summit

Based upon the April recommendations from his Cabinet officials, Governor Corzine convened a Summit “*Confronting Climate Change in New Jersey*”, which was held on September 25, 2006. The Governor directed Summit participants to focus on, among other things:

- What policy changes should the State make in response to the focus issues of floods and storms (including sea level rise)?
- Are there current State policies and practices regarding the regulation of ...**land use and construction** that serve as **disincentives to sound practices** in light of climate change?
- What ...[policies] could we modify to encourage consideration of floods and storms **in development and land use practices**?

## PEER suggested amendments to A3236

As I indicated in testimony, global warming reforms are beyond the scope of the subject bill. However, the Corzine Administration has initiated an energy planning process and

seems to be interested in minor policy and regulatory reforms. To bolster these efforts, I am pleased to note the introduction of the “*Global Warming Response Act*” (A3301/S2114), which would require mandatory limits on our total global warming emissions. I urge you to co-sponsor and support that bill, especially as it relates to the subject bill. I also urge you to work with the insurance industry supporters of A3236 to encourage their support of A3301/S2114).

However, much needed land use legislative and regulatory reforms are not under consideration at this time. Based upon DEP’s 309 land use related findings, the warnings of the Commissioners of DEP and Banking and Insurance, and the Governor’s charge to the Climate Change Summit, we strongly urge a more active State land use response, including amendments to the subject bill, to the MLUL, and to CAFRA to:

- Direct future public and private development and redevelopment away from hazardous and environmentally sensitive areas, including the high hazard areas delineated as FEMA V zones and other areas vulnerable to inundation from sea level rise, storm surge, and flooding. Strategies would include tightening the current CAFRA provision regarding reconstruction of storm damaged properties @ NJSA 13:19-5.2(b) and closing various other CAFRA loopholes;
- Preserve and restore the protective functions of natural shoreline features such as beaches, dunes, and wetlands;
- Prevent or minimize threats to existing populations and property from both episodic and chronic coastal hazards;
- Avoid disincentives to sound practices by restricting eligibility for insurance coverage for new development; and eliminating eligibility for insurance coverage for reconstruction of storm damaged properties;
- Provide additional resources and stronger land use tools pursuant to the MLUL, including requirements to consider coastal hazards in Master Plans, zoning, and development review ordinances;
- strengthen the provisions of A3236 Section 9.f regarding developing prevention and mitigation standards. Building codes are an insufficient form of prevention, and the bill’s focus on prevention and mitigation for any substantially damaged structure needs to be strengthened.

We appreciate the opportunity to submit these comments and look forward to your favorable consideration of our concerns. I am available to discuss these concerns at your convenience – I may be reached at 609-397-8213. .

Sincerely,

Bill Wolfe, Director  
NJ PEER

C: Richard T. Corbet, OLS  
Financial Institutions and Insurance Committee Aide

