



General Assembly

January Session, 2003

Raised Bill No. 1018

LCO No. 3508

Referred to Committee on Environment

Introduced by:
(ENV)

AN ACT CONCERNING THE PROTECTION OF LONG ISLAND SOUND.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (h) of section 16-50j of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective from*
3 *passage*):

4 (h) Prior to commencing any hearing pursuant to section 16-50m,
5 the council shall consult with and solicit written comments from the
6 Department of Environmental Protection, the Department of Public
7 Health, the Council on Environmental Quality, the Department of
8 Agriculture, the Department of Public Utility Control, the Office of
9 Policy and Management, the Department of Economic and
10 Community Development and the Department of Transportation. In
11 addition, the Department of Environmental Protection shall have the
12 continuing responsibility to investigate and report to the council on all
13 applications which prior to October 1, 1973, were within the
14 jurisdiction of said Department of Environmental Protection with
15 respect to the granting of a permit. Copies of such comments shall be
16 made available to all parties prior to the commencement of the
17 hearing. Subsequent to the commencement of the hearing, said

18 departments, council and commissions may file additional written
19 comments with the council within such period of time as the council
20 designates. All such written comments shall be made part of the record
21 provided by section 16-50o. Said departments, council and
22 commissions shall not enter any contract or agreement with any party
23 to the proceedings or hearings described in this section or section 16-
24 50p, as amended by this act, that requires said department, council or
25 commission to withhold or retract comments, refrain from
26 participating in or withdraw from said proceedings or hearings.

27 Sec. 2. Subsection (a) of section 16-50p of the general statutes is
28 repealed and the following is substituted in lieu thereof (*Effective from*
29 *passage*):

30 (a) In a certification proceeding, the council shall render a decision
31 upon the record either granting or denying the application as filed, or
32 granting it upon such terms, conditions, limitations or modifications of
33 the construction or operation of the facility as the council may deem
34 appropriate. The council's decision shall be rendered within twelve
35 months of the filing of an application concerning a facility described in
36 subdivision (1) or (2) of subsection (a) of section 16-50i or subdivision
37 (4) of said subsection (a) if the application was incorporated in an
38 application concerning a facility described in subdivision (1) of said
39 subsection (a), and within one hundred eighty days of the filing of any
40 other application concerning a facility described in subdivision (4) of
41 said subsection (a), and an application concerning a facility described
42 in subdivision (3), (5) or (6) of said subsection (a), provided such time
43 periods may be extended by the council by not more than one hundred
44 eighty days with the consent of the applicant. The council shall file,
45 with its order, an opinion stating in full its reasons for the decision.
46 Except as provided in subsection (c) of this section, the council shall
47 not grant a certificate, either as proposed or as modified by the council,
48 unless it shall find and determine: (1) A public need for the facility and
49 the basis of the need taking into consideration other feasible and
50 prudent alternatives provided to the council by a party or intervenor

51 that address the same public need; (2) the nature of the probable
52 environmental impact of the facility alone and cumulatively with other
53 facilities or proposed facilities provided to the council by a party or
54 intervenor, including a specification of every significant adverse effect,
55 whether alone or cumulatively with other effects, on, and conflict with
56 the policies of the state concerning, the natural environment, ecological
57 balance, public health and safety, scenic, historic and recreational
58 values, forests and parks, air and water purity and fish, aquaculture
59 and wildlife; (3) why the adverse effects or conflicts referred to in
60 subdivision (2) of this subsection are not sufficient reason to deny the
61 application, including why other feasible and prudent alternatives
62 with less adverse effects or fewer conflicts which are submitted to the
63 council by a party or intervenor do not address the same public need;
64 (4) in the case of an electric transmission line, (A) what part, if any, of
65 the facility shall be located overhead, (B) that the facility conforms to a
66 long-range plan for expansion of the electric power grid of the electric
67 systems serving the state and interconnected utility systems and will
68 serve the interests of electric system economy and reliability, and (C)
69 that the overhead portions of the facility, if any, are cost effective and
70 the most appropriate alternative based on a life-cycle cost analysis of
71 the facility and underground alternatives to such facility, and are
72 consistent with the purposes of this chapter, with such regulations as
73 the council may adopt pursuant to subsection (a) of section 16-50t, and
74 with the Federal Power Commission "Guidelines for the Protection of
75 Natural Historic Scenic and Recreational Values in the Design and
76 Location of Rights-of-Way and Transmission Facilities" or any
77 successor guidelines and any other applicable federal guidelines; (5) in
78 the case of an electric or fuel transmission line, that the location of the
79 line will not pose an undue hazard to persons or property along the
80 area traversed by the line. The terms of any agreement entered into by
81 the applicant and any party to the certification proceeding, or any
82 third party, in connection with the construction or operation of the
83 facility, shall be part of the record of the proceedings and available for
84 public inspection. The full text of any such agreement, and a statement

85 of any consideration therefor, if not contained in the agreement, shall
86 be filed with the council prior to the council's decision. This provision
87 shall not require the public disclosure of proprietary information or
88 trade secrets.

89 Sec. 3. Subsection (c) of section 16-50p of the general statutes is
90 repealed and the following is substituted in lieu thereof (*Effective from*
91 *passage*):

92 (c) (1) The council shall not grant a certificate for a facility described
93 in subdivision (3) of subsection (a) of section 16-50i, either as proposed
94 or as modified by the council, unless it finds and determines: (A) A
95 public benefit for the facility; (B) the nature of the probable
96 environmental impact, including a specification of every significant
97 adverse and beneficial effect that, whether alone or cumulatively with
98 other effects, conflicts with the policies of the state concerning the
99 natural environment, ecological balance, public health and safety,
100 scenic, historic and recreational values, forests and parks, air and
101 water purity and fish and wildlife; and (C) why the adverse effects or
102 conflicts referred to in subparagraph (B) of this subdivision are not
103 sufficient reason to deny the application. For purposes of
104 subparagraph (A) of this subdivision, a public benefit exists if such a
105 facility is necessary for the reliability of the electric power supply of
106 the state or for a competitive market for electricity.

107 (2) The council shall not grant a certificate for a facility described in
108 subdivision (1) of subsection (a) of section 16-50i which is substantially
109 underground or underwater except where such facilities interconnect
110 with existing overhead facilities, either as proposed or as modified by
111 the council, unless it finds and determines: (A) A public benefit for the
112 facility taking into consideration other feasible and prudent
113 alternatives provided to the council by a party or intervenor that
114 address the same public need; (B) the nature of the probable
115 environmental impact of the facility alone and cumulatively with other
116 facilities or proposed facilities provided to the council by a party or

117 intervenor, including a specification of every single adverse and
118 beneficial effect that, whether alone or cumulatively with other effects,
119 conflict with the policies of the state concerning the natural
120 environment, ecological balance, public health and safety, scenic,
121 historic and recreational values, forests and parks, air and purity and
122 fish and wildlife; (C) why the adverse effects or conflicts referred to in
123 subparagraph (B) of this subdivision are not sufficient reason to deny
124 the application, including why other feasible and prudent alternatives
125 with less adverse effects and fewer conflicts that were provided to the
126 council by a party or intervenor do not address the same public need;
127 (D) in the case of a new electric transmission line, (i) what part, if any,
128 of the facility shall be located overhead, (ii) that the facility conforms to
129 a long-range plan for expansion of the electric power grid of the
130 electric systems serving the state and interconnected utility systems
131 and will serve the interests of electric system economy and reliability,
132 and (iii) that the overhead portions of the facility, if any, are cost-
133 effective and the most appropriate alternative based on a life-cycle cost
134 analysis of the facility and underground alternatives to such facility
135 and are consistent with the purposes of this chapter, with such
136 regulations as the council may adopt pursuant to subsection (a) of
137 section 16-50t, and with the Federal Energy Regulatory Commission
138 "Guidelines For the Protection of Natural Historic Scenic and
139 Recreational Values in the Design and Location of Rights-of-Way and
140 Transmission Facilities" or any other successor guidelines and any
141 other applicable federal guidelines; and (E) in the case of an electric or
142 fuel transmission line, that the location of the line will not pose an
143 undue hazard to persons or property along the area traversed by the
144 line. For purposes of subparagraph (A) of this subdivision, a public
145 benefit exists if such a facility is necessary for the reliability of the
146 electric power supply of the state or for the development of a
147 competitive market for electricity.

148 Sec. 4. Section 26-194 of the general statutes is repealed and the
149 following is substituted in lieu thereof (*Effective from passage*):

150 (a) The Commissioner of Agriculture may lease in the name of the
151 state, under such regulations as he may prescribe and for a period not
152 longer than ten years, all shellfish areas that have been conveyed to the
153 state or placed under state jurisdiction by the town of West Haven and
154 any undesignated grounds, within the exclusive jurisdiction of the
155 state, for the purpose of planting and cultivating shellfish. The
156 authority herein conferred shall include the Cornell Reef, Portchester,
157 Great Captain's Island, Field Point and Greenwich Point natural beds
158 as located and described in section 3295 of the general statutes,
159 revision of 1918. Any person desiring to lease grounds for such
160 purpose shall make application in writing to the commissioner and all
161 grounds leased by authority of the provisions of this section shall be
162 leased to the highest responsible bidder, for a minimum fee of two
163 dollars per acre. Such lease or lease renewal shall require the lessee to
164 make a good faith effort to cultivate and harvest shellfish from the
165 leased area. Such lease or lease renewal shall prohibit the lessee from
166 entering a contract whereby the lessee agrees not to cultivate and
167 harvest shellfish for any period of time. No lessee may enter an
168 agreement with a third party that will prevent the lessee from carrying
169 out the lessee's obligations under the lease unless the Department of
170 Agriculture and the Attorney General have approved such agreement.
171 The form of such application and lease shall be approved by the
172 Attorney General, and all such leases shall be recorded in the records
173 of the commissioner. No lease shall be granted to a resident of a state
174 which does not lease shellfish grounds to residents of this state, except
175 that any nonresident who was granted a lease on or before October 1,
176 1985, may, upon the expiration of such lease, apply for a renewal or
177 further lease as provided in this section. The commissioner shall grant
178 any such lease to nonresidents upon the same terms and conditions as
179 to residents of this state. Any lessee or holder of oyster ground, on the
180 expiration of any lease thereof which has been or which may be
181 granted, shall, upon application to the commissioner, have the
182 preference in the reletting of such ground for a like term to that
183 granted in the original lease, unless such applicant, at the time for

184 granting such application, is in arrears for rent on the original lease of
185 such ground. Such application for such renewal or further lease shall
186 be granted without notice or advertisement of the pendency thereof;
187 provided no renewal or further lease of such ground shall be granted
188 when the commissioner, for cause, ceases to lease such ground for
189 oyster culture. All assignments or transfers of leases shall be subject to
190 the approval of the commissioner and shall be recorded in his records.
191 Any person who interferes with, annoys or molests another in the
192 enjoyment of any lease authorized by the provisions of this section
193 shall be subject to the penalties provided in section 26-237. The
194 provisions of sections 26-212, 26-215 and 26-232 shall not apply to any
195 shellfish grounds leased pursuant to the provisions of this section.

196 (b) Notwithstanding the provisions of subsection (a) of this section,
197 the Commissioner of Agriculture shall make a reasonable effort to
198 enter a new lease agreement for another leased area with any lessee
199 whose leased area is the site of the construction and placement of a
200 utility line or public use structure. Any permittee of such utility line or
201 public use structure that crosses a leased area shall pay to the lessee
202 the costs of removing or relocating any shellfish into another leased
203 area. Nothing in this subsection shall be construed to prohibit the state
204 or a lessee from instituting legal action to recover damages from any
205 such permittee for other damages incurred by the state or lessee that
206 are related to the installation, construction or presence of such utility
207 line or public use structure.

208 (c) The Commissioner of Agriculture shall assess the permittee of
209 any utility line or public use structure that crosses any grounds of
210 Long Island Sound within the jurisdiction of the state, including, but
211 not limited to, any shellfish area or leased, designated or granted
212 grounds, an annual host payment fee of eighteen dollars per linear foot
213 for the entire length of such line or structure, the proceeds of which
214 shall be used for the restoration and seeding of shellfish beds in the
215 state including, but not limited to, grants for the restoration and
216 seeding of shellfish beds in the state. The commissioner may issue

217 regulations, in accordance with chapter 54, concerning the
218 requirements and application procedures for such grants.

219 [(b)] (d) The commissioner may designate an agent within the
220 department to exercise the authority of said commissioner under this
221 section.

222 Sec. 5. Section 26-240 of the general statutes is repealed and the
223 following is substituted in lieu thereof (*Effective from passage*):

224 (a) Any person desiring to plant or cultivate oysters, clams or
225 mussels, in any waters within town jurisdiction, may apply in writing,
226 to the shellfish commission or to selectmen authorized to act, of the
227 town where such grounds are situated, to designate a suitable place to
228 be used by him for that purpose, and such commission or selectmen
229 may make such designation and such applicant shall make and stake
230 out such place and may enclose it with buoys or with stakes, set at
231 suitable distances and distinctly visible above the surface at high
232 water. Such designation shall require the applicant to make a good
233 faith effort to cultivate and harvest shellfish from the designated area.
234 Such designation shall prohibit the applicant from entering a contract
235 with another person that requires the applicant to refrain from
236 cultivating or harvesting shellfish for any period of time except upon
237 approval by the shellfish commission or selectmen, as applicable. Such
238 commission or selectmen shall make a written description of such
239 designation and enclosure, by ranges or otherwise, as may be most
240 convenient, which shall state the time of such designation. The money
241 derived from such designation by selectmen shall be paid to the town
242 in which the same is made. The money derived from a designation by
243 a shellfish commission shall be paid to the commission. A designation
244 may be made to several in common, as well as to individuals. No such
245 designation by the commission or the selectmen shall become effective
246 or be established until after a public hearing in relation thereto has
247 been held by the commission or selectmen authorized to act for that
248 purpose at which parties in interest and citizens shall have an

249 opportunity to be heard. Notice of the time and place of such hearing
250 shall be published in a newspaper having a substantial circulation in
251 such municipality at least twice at intervals of not less than two days,
252 the first not more than fifteen days and the last not less than two days
253 before such hearing. A copy of the written application for the
254 designation shall be filed in the office of the town clerk in such
255 municipality for public inspection at least fifteen days before such
256 hearing and shall be published in full in such newspaper.

257 (b) Notwithstanding the provisions of subsection (a) of this section,
258 the shellfish commission or selectmen, as applicable, shall make a
259 reasonable effort to designate another area for any person whose
260 designated area is the site of the construction or placement of a utility
261 line or public use structure. Any permittee of any such utility line or
262 public use structure that crosses a designated area shall pay to the
263 designee the costs of removing or relocating any shellfish to another
264 designated area. Nothing in this subsection shall be construed to
265 prohibit the state, the shellfish commission, the board of selectmen or a
266 designee from instituting legal action to recover damages from any
267 said permittee for other damages incurred that are related to the
268 installation, construction or presence of such utility line or public use
269 structure.

270 Sec. 6. Section 26-266 of the general statutes is repealed and the
271 following is substituted in lieu thereof (*Effective from passage*):

272 (a) The selectmen of the town of Branford or shellfish commission
273 established in accordance with section 26-257a shall have charge of all
274 the shellfisheries and shell and shellfish grounds lying in said town not
275 granted to others and not under the jurisdiction of the Commissioner
276 of Agriculture, between the center line of the Farm or East Haven
277 River and the Guilford town line and below mean high-water mark,
278 with power to issue licenses for the taking of shellfish and shells
279 therefrom and to designate the quantities of such shellfish and shells to
280 be taken, the sizes of such shellfish and the methods of taking. They

281 shall also have power to restrict the taking of such shellfish and shells
282 from certain designated areas for periods not in excess of one year. The
283 grants of all areas of shellfish grounds lying within the boundaries of
284 the town of Branford upon which no tax has been paid for a period of
285 three years preceding shall be deemed vacated and such areas shall
286 revert to the town of Branford and become available for further grant
287 by the selectmen or shellfish commission of said town. Before making
288 a further grant, the selectmen or shellfish commission shall determine
289 if such grounds are suitable for public use and any part thereof so
290 determined shall not be available for such grant. Such grant shall
291 require the applicant to make a good faith effort to cultivate and
292 harvest shellfish from the designated area. Such grant shall prohibit
293 the applicant from entering a contract with another person wherein the
294 applicant agrees to not cultivate or harvest shellfish for any period of
295 time, except upon approval by the shellfish commission or selectmen,
296 as applicable.

297 (b) Notwithstanding the provisions of subsection (a) of this section,
298 the shellfish commission or selectmen, as applicable, shall make a
299 reasonable effort to designate or grant another area for any person
300 whose designated or granted area is the site of the construction and
301 placement of a utility line or public use structure. Any permittee of
302 such utility line or public use structure that crosses a designated area
303 shall pay to the designee or grantee the costs of removing or relocating
304 any shellfish into another designated or granted area. Nothing in this
305 subsection shall be construed to prohibit the state, the shellfish
306 commission, the board of selectmen or a designee or grantee from
307 instituting legal action to recover damages from any such permittee for
308 other damages incurred that are related to the installation, construction
309 or presence of such utility line or public use structure.

310 Sec. 7. Subsection (b) of section 22a-361 of the general statutes is
311 repealed and the following is substituted in lieu thereof (*Effective from*
312 *passage*):

313 (b) The commissioner, at least thirty days before approving or
314 denying an application for a permit, shall provide or require the
315 applicant to provide, by certified mail, return receipt requested, to the
316 applicant, to the Commissioner of Transportation, the Attorney
317 General, the Commissioner of Agriculture and to the chief executive
318 officer, the chairmen of the planning, zoning, harbor management and
319 shellfish commissions of each town in which such structure, fill,
320 obstruction, encroachment or dredging is to be located or work to be
321 performed, and to the owner of each franchised oyster ground and the
322 lessee of each leased oyster ground within which such work is to be
323 performed and shall publish once in a newspaper having a substantial
324 circulation in the area affected, notice of (1) the name of the applicant;
325 (2) the location and nature of the proposed activities; (3) the tentative
326 decision regarding the application; and (4) any additional information
327 the commissioner deems necessary. There shall be a comment period
328 following the public notice during which interested persons may
329 submit written comments. The commissioner may hold a public
330 hearing prior to approving or denying an application if, in the
331 commissioner's discretion, the public interest will best be served by
332 holding such hearing. The commissioner shall hold a public hearing
333 upon receipt of a petition signed by at least twenty-five persons if the
334 proposed activity exceeds one million dollars in value. Following such
335 notice and comment period and public hearing, if applicable, the
336 commissioner may, in whole or in part, approve, modify and approve
337 or deny the application. The commissioner shall provide to the
338 applicant and the persons set forth above, by certified mail, return
339 receipt requested, notice of his decision. If the commissioner requires
340 the applicant to provide the notice specified in this subsection, the
341 applicant shall certify to the commissioner, no later than twenty days
342 after providing such notice, that such notice has been provided in
343 accordance with this subsection.

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| This act shall take effect as follows: | |
| Section 1 | <i>from passage</i> |

| | |
|--------|---------------------|
| Sec. 2 | <i>from passage</i> |
| Sec. 3 | <i>from passage</i> |
| Sec. 4 | <i>from passage</i> |
| Sec. 5 | <i>from passage</i> |
| Sec. 6 | <i>from passage</i> |
| Sec. 7 | <i>from passage</i> |

Statement of Purpose:

To require the siting council to consider other feasible and prudent alternatives to proposed projects. Additionally, to require lessees of shellfish beds to engage in good faith efforts to harvest and cultivate such shellfish. Finally, to provide for the option of a public hearing on a structures and dredging permit application.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]