



General Assembly

Substitute Bill No. 1018

January Session, 2003

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2 repealed and the following is substituted in lieu thereof (*Effective from*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28 repealed and the following is substituted in lieu thereof (*Effective from*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, in the case of such facility that is substantially underground,
113 and a public need for such facility, in the case of such facility that is
114 substantially underwater taking into consideration other feasible and
115 prudent alternatives provided to the council by a party or intervenor
116 that address the same public need or public benefit, as applicable; (B)
117 the nature of the probable environmental impact of the facility alone
118 and cumulatively with other facilities or proposed facilities provided
119 to the council by a party or intervenor, including a specification of
120 every single adverse and beneficial effect that, whether alone or
121 cumulatively with other effects, conflict with the policies of the state
122 concerning the natural environment, ecological balance, public health
123 and safety, scenic, historic and recreational values, forests and parks,

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

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

154 (a) The Commissioner of Agriculture may lease in the name of the
155 state, under such regulations as he may prescribe and for a period not
156 longer than ten years, all shellfish areas that have been conveyed to the
157 state or placed under state jurisdiction by the town of West Haven and

158 any undesignated grounds, within the exclusive jurisdiction of the
159 state, for the purpose of planting and cultivating shellfish. The
160 authority herein conferred shall include the Cormell Reef, Portchester,
161 Great Captain's Island, Field Point and Greenwich Point natural beds
162 as located and described in section 3295 of the general statutes,
163 revision of 1918. Any person desiring to lease grounds for such
164 purpose shall make application in writing to the commissioner and all
165 grounds leased by authority of the provisions of this section shall be
166 leased to the highest responsible bidder, for a minimum fee of two
167 dollars per acre. Such lease or lease renewal shall require the lessee to
168 make a good faith effort to cultivate and harvest shellfish from the
169 leased area. Such lease or lease renewal shall prohibit the lessee from
170 entering a contract whereby the lessee agrees not to cultivate and
171 harvest shellfish for any period of time. No lessee may enter an
172 agreement with a third party that will prevent the lessee from carrying
173 out the lessee's obligations under the lease unless the Department of
174 Agriculture and the Attorney General have approved such agreement.
175 The form of such application and lease shall be approved by the
176 Attorney General, and all such leases shall be recorded in the records
177 of the commissioner. No lease shall be granted to a resident of a state
178 which does not lease shellfish grounds to residents of this state, except
179 that any nonresident who was granted a lease on or before October 1,
180 1985, may, upon the expiration of such lease, apply for a renewal or
181 further lease as provided in this section. The commissioner shall grant
182 any such lease to nonresidents upon the same terms and conditions as
183 to residents of this state. Any lessee or holder of oyster ground, on the
184 expiration of any lease thereof which has been or which may be
185 granted, shall, upon application to the commissioner, have the
186 preference in the reletting of such ground for a like term to that
187 granted in the original lease, unless such applicant, at the time for
188 granting such application, is in arrears for rent on the original lease of
189 such ground. Such application for such renewal or further lease shall
190 be granted without notice or advertisement of the pendency thereof;
191 provided no renewal or further lease of such ground shall be granted
192 when the commissioner, for cause, ceases to lease such ground for

193 oyster culture. All assignments or transfers of leases shall be subject to
194 the approval of the commissioner and shall be recorded in his records.
195 Any person who interferes with, annoys or molests another in the
196 enjoyment of any lease authorized by the provisions of this section
197 shall be subject to the penalties provided in section 26-237. The
198 provisions of sections 26-212, 26-215 and 26-232 shall not apply to any
199 shellfish grounds leased pursuant to the provisions of this section.

200 (b) Notwithstanding the provisions of subsection (a) of this section,
201 any owner of a utility line or public use structure that crosses a leased
202 area shall pay to the lessee the costs of removing or relocating any
203 shellfish into another leased area. Nothing in this subsection shall be
204 construed to prohibit the state or a lessee from instituting legal action
205 to recover damages from any such owner for other damages incurred
206 by the state or lessee that are related to the installation, construction or
207 presence of such utility line or public use structure.

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

259 designated area shall pay to the designee the costs of removing or
260 relocating any shellfish to another designated area. Nothing in this
261 subsection shall be construed to prohibit the state, the shellfish
262 commission, the board of selectmen or a designee from instituting
263 legal action to recover damages from any said owner for other
264 damages incurred that are related to the installation, construction or
265 presence of such utility line or public use structure.

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

268 (a) The selectmen of the town of Branford or shellfish commission
269 established in accordance with section 26-257a shall have charge of all
270 the shellfisheries and shell and shellfish grounds lying in said town not
271 granted to others and not under the jurisdiction of the Commissioner
272 of Agriculture, between the center line of the Farm or East Haven
273 River and the Guilford town line and below mean high-water mark,
274 with power to issue licenses for the taking of shellfish and shells
275 therefrom and to designate the quantities of such shellfish and shells to
276 be taken, the sizes of such shellfish and the methods of taking. They
277 shall also have power to restrict the taking of such shellfish and shells
278 from certain designated areas for periods not in excess of one year. The
279 grants of all areas of shellfish grounds lying within the boundaries of
280 the town of Branford upon which no tax has been paid for a period of
281 three years preceding shall be deemed vacated and such areas shall
282 revert to the town of Branford and become available for further grant
283 by the selectmen or shellfish commission of said town. Before making
284 a further grant, the selectmen or shellfish commission shall determine
285 if such grounds are suitable for public use and any part thereof so
286 determined shall not be available for such grant. Such grant shall
287 require the applicant to make a good faith effort to cultivate and
288 harvest shellfish from the designated area. Such grant shall prohibit
289 the applicant from entering a contract with another person wherein the
290 applicant agrees to not cultivate or harvest shellfish for any period of
291 time, except upon approval by the shellfish commission or selectmen,
292 as applicable.

293 (b) Notwithstanding the provisions of subsection (a) of this section,
294 any owner of a utility line or public use structure that crosses a
295 designated area shall pay to the designee or grantee the costs of
296 removing or relocating any shellfish into another designated or
297 granted area. Nothing in this subsection shall be construed to prohibit
298 the state, the shellfish commission, the board of selectmen or a
299 designee or grantee from instituting legal action to recover damages
300 from any such owner for other damages incurred that are related to the
301 installation, construction or presence of such utility line or public use
302 structure.

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

306 (b) The commissioner, at least thirty days before approving or
307 denying an application for a permit, shall provide or require the
308 applicant to provide, by certified mail, return receipt requested, to the
309 applicant, to the Commissioner of Transportation, the Attorney
310 General, the Commissioner of Agriculture and to the chief executive
311 officer, the chairmen of the planning, zoning, harbor management and
312 shellfish commissions of each town in which such structure, fill,
313 obstruction, encroachment or dredging is to be located or work to be
314 performed, and to the owner of each franchised oyster ground and the
315 lessee of each leased oyster ground within which such work is to be
316 performed and shall publish once in a newspaper having a substantial
317 circulation in the area affected, notice of (1) the name of the applicant;
318 (2) the location and nature of the proposed activities; (3) the tentative
319 decision regarding the application; and (4) any additional information
320 the commissioner deems necessary. There shall be a comment period
321 following the public notice during which interested persons may
322 submit written comments. The commissioner may hold a public
323 hearing prior to approving or denying an application if, in the
324 commissioner's discretion, the public interest will best be served by
325 holding such hearing. The commissioner shall hold a public hearing if
326 an application will: (A) Impact any shellfish area, as determined by the

327 director of the Bureau of Aquaculture at the Department of
 328 Agriculture, (B) have interstate ramifications, (C) involve any type of
 329 utility line, or (D) involve a new commercial activity with a value in
 330 excess of one million dollars. Following such notice and comment
 331 period and public hearing, if applicable, the commissioner may, in
 332 whole or in part, approve, modify and approve or deny the
 333 application. The commissioner shall provide to the applicant and the
 334 persons set forth above, by certified mail, return receipt requested,
 335 notice of his decision. If the commissioner requires the applicant to
 336 provide the notice specified in this subsection, the applicant shall
 337 certify to the commissioner, no later than twenty days after providing
 338 such notice, that such notice has been provided in accordance with this
 339 subsection.

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 Legislative Commissioners:

Throughout the bill, the term "permittee" was changed to "owner" for purposes of clarity.

ENV *Joint Favorable Subst.*