



General Assembly

Amendment

January Session, 2003

LCO No. 6971

SB0101806971SD0

Offered by:

SEN. WILLIAMS, 29th Dist.

REP. WIDLITZ, 98th Dist.

To: Subst. Senate Bill No. 1018

File No. 462

Cal. No. 314

"AN ACT CONCERNING THE PROTECTION OF LONG ISLAND SOUND."

1 Strike everything after the enacting clause and substitute the
2 following in lieu thereof:

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4 repealed and the following is substituted in lieu thereof (*Effective from*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

6 (h) Prior to commencing any hearing pursuant to section 16-50m,
7 the council shall consult with and solicit written comments from the
8 Department of Environmental Protection, the Department of Public
9 Health, the Council on Environmental Quality, the Department of
10 Agriculture, the Department of Public Utility Control, the Office of
11 Policy and Management, the Department of Economic and
12 Community Development and the Department of Transportation. In
13 addition, the Department of Environmental Protection shall have the
14 continuing responsibility to investigate and report to the council on all

15 applications which prior to October 1, 1973, were within the
16 jurisdiction of said Department of Environmental Protection with
17 respect to the granting of a permit. Copies of such comments shall be
18 made available to all parties prior to the commencement of the
19 hearing. Subsequent to the commencement of the hearing, said
20 departments, council and commissions may file additional written
21 comments with the council within such period of time as the council
22 designates. All such written comments shall be made part of the record
23 provided by section 16-50o. Said departments, council and
24 commissions shall not enter any contract or agreement with any party
25 to the proceedings or hearings described in this section or section 16-
26 50p, as amended by this act, that requires said department, council or
27 commission to withhold or retract comments, refrain from
28 participating in or withdraw from said proceedings or hearings.

29 Sec. 2. Section 26-194 of the general statutes is repealed and the
30 following is substituted in lieu thereof (*Effective from passage*):

31 (a) The Commissioner of Agriculture may lease in the name of the
32 state, under such regulations as he may prescribe and for a period not
33 longer than ten years, all shellfish areas that have been conveyed to the
34 state or placed under state jurisdiction by the town of West Haven and
35 any undesignated grounds, within the exclusive jurisdiction of the
36 state, for the purpose of planting and cultivating shellfish. The
37 authority herein conferred shall include the Cornell Reef, Portchester,
38 Great Captain's Island, Field Point and Greenwich Point natural beds
39 as located and described in section 3295 of the general statutes,
40 revision of 1918. Any person desiring to lease grounds for such
41 purpose shall make application in writing to the commissioner and all
42 grounds leased by authority of the provisions of this section shall be
43 leased to the highest responsible bidder, for a minimum fee of two
44 dollars per acre. Such lease or lease renewal shall require the lessee to
45 make a good faith effort to cultivate and harvest shellfish from the
46 leased area. Such lease or lease renewal shall prohibit the lessee from
47 entering a contract whereby the lessee agrees not to cultivate and
48 harvest shellfish for any period of time. No lessee may enter an

49 agreement with a third party that will prevent the lessee from carrying
50 out the lessee's obligations under the lease unless the Department of
51 Agriculture and the Attorney General have approved such agreement.
52 The form of such application and lease shall be approved by the
53 Attorney General, and all such leases shall be recorded in the records
54 of the commissioner. No lease shall be granted to a resident of a state
55 which does not lease shellfish grounds to residents of this state, except
56 that any nonresident who was granted a lease on or before October 1,
57 1985, may, upon the expiration of such lease, apply for a renewal or
58 further lease as provided in this section. The commissioner shall grant
59 any such lease to nonresidents upon the same terms and conditions as
60 to residents of this state. Any lessee or holder of oyster ground, on the
61 expiration of any lease thereof which has been or which may be
62 granted, shall, upon application to the commissioner, have the
63 preference in the reletting of such ground for a like term to that
64 granted in the original lease, unless such applicant, at the time for
65 granting such application, is in arrears for rent on the original lease of
66 such ground. Such application for such renewal or further lease shall
67 be granted without notice or advertisement of the pendency thereof;
68 provided no renewal or further lease of such ground shall be granted
69 when the commissioner, for cause, ceases to lease such ground for
70 oyster culture. All assignments or transfers of leases shall be subject to
71 the approval of the commissioner and shall be recorded in his records.
72 Any person who interferes with, annoys or molests another in the
73 enjoyment of any lease authorized by the provisions of this section
74 shall be subject to the penalties provided in section 26-237. The
75 provisions of sections 26-212, 26-215 and 26-232 shall not apply to any
76 shellfish grounds leased pursuant to the provisions of this section.

77 (b) Notwithstanding the provisions of subsection (a) of this section,
78 any owner of a utility line or public use structure that impacts on a
79 leased area shall pay to the lessee the costs of removing or relocating
80 any shellfish. Nothing in this subsection shall be construed to prohibit
81 the state or any lessee from recovering damages incurred by the state
82 or the lessee caused by the installation, construction or presence of

83 such utility line or public use structure.

84 (c) The Commissioner of Agriculture shall assess the owner of any
85 facility that is installed on and after the effective date of this section
86 and that requires a certificate issued pursuant to section 16-50k or that
87 requires approval by the Federal Energy Regulatory Commission and
88 that crosses any grounds of Long Island Sound within the jurisdiction
89 of the state, including, but not limited to, any shellfish area or leased,
90 designated or granted grounds, an annual host payment fee of
91 eighteen dollars per linear foot for the length of such facility within the
92 jurisdiction of the state, the proceeds of which shall be used for the
93 restoration and seeding of shellfish beds in the state including, but not
94 limited to, grants for the restoration and seeding of shellfish beds in
95 the state. The commissioner may adopt regulations, in accordance with
96 the provisions of chapter 54, concerning the requirements and
97 application procedures for such grants. For purposes of this
98 subsection, "installed" shall not include the repair or replacement of
99 any facility provided such repair or replacement does not result in the
100 increased capacity of such facility.

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

104 Sec. 3. Section 26-240 of the general statutes is repealed and the
105 following is substituted in lieu thereof (*Effective from passage*):

106 (a) Any person desiring to plant or cultivate oysters, clams or
107 mussels, in any waters within town jurisdiction, may apply in writing,
108 to the shellfish commission or to selectmen authorized to act, of the
109 town where such grounds are situated, to designate a suitable place to
110 be used by him for that purpose, and such commission or selectmen
111 may make such designation and such applicant shall make and stake
112 out such place and may enclose it with buoys or with stakes, set at
113 suitable distances and distinctly visible above the surface at high
114 water. Such designation shall require the applicant to make a good

115 faith effort to cultivate and harvest shellfish from the designated area.
116 Such designation shall prohibit the applicant from entering a contract
117 with another person that requires the applicant to refrain from
118 cultivating or harvesting shellfish for any period of time except upon
119 approval by the shellfish commission or selectmen, as applicable. Such
120 commission or selectmen shall make a written description of such
121 designation and enclosure, by ranges or otherwise, as may be most
122 convenient, which shall state the time of such designation. The money
123 derived from such designation by selectmen shall be paid to the town
124 in which the same is made. The money derived from a designation by
125 a shellfish commission shall be paid to the commission. A designation
126 may be made to several in common, as well as to individuals. No such
127 designation by the commission or the selectmen shall become effective
128 or be established until after a public hearing in relation thereto has
129 been held by the commission or selectmen authorized to act for that
130 purpose at which parties in interest and citizens shall have an
131 opportunity to be heard. Notice of the time and place of such hearing
132 shall be published in a newspaper having a substantial circulation in
133 such municipality at least twice at intervals of not less than two days,
134 the first not more than fifteen days and the last not less than two days
135 before such hearing. A copy of the written application for the
136 designation shall be filed in the office of the town clerk in such
137 municipality for public inspection at least fifteen days before such
138 hearing and shall be published in full in such newspaper.

139 (b) Notwithstanding the provisions of subsection (a) of this section,
140 any owner of a utility line or public use structure that impacts on a
141 designated area shall pay to the designee the costs of removing or
142 relocating any shellfish. Nothing in this subsection shall be construed
143 to prohibit the state, the shellfish commission, the board of selectmen
144 or a designee from recovering damages incurred by the state, the
145 shellfish commission, the board of selectmen or the designee caused by
146 the installation, construction or presence of such utility line or public
147 use structure.

148 Sec. 4. Section 26-266 of the general statutes is repealed and the

149 following is substituted in lieu thereof (*Effective from passage*):

150 (a) The selectmen of the town of Branford or shellfish commission
151 established in accordance with section 26-257a shall have charge of all
152 the shellfisheries and shell and shellfish grounds lying in said town not
153 granted to others and not under the jurisdiction of the Commissioner
154 of Agriculture, between the center line of the Farm or East Haven
155 River and the Guilford town line and below mean high-water mark,
156 with power to issue licenses for the taking of shellfish and shells
157 therefrom and to designate the quantities of such shellfish and shells to
158 be taken, the sizes of such shellfish and the methods of taking. They
159 shall also have power to restrict the taking of such shellfish and shells
160 from certain designated areas for periods not in excess of one year. The
161 grants of all areas of shellfish grounds lying within the boundaries of
162 the town of Branford upon which no tax has been paid for a period of
163 three years preceding shall be deemed vacated and such areas shall
164 revert to the town of Branford and become available for further grant
165 by the selectmen or shellfish commission of said town. Before making
166 a further grant, the selectmen or shellfish commission shall determine
167 if such grounds are suitable for public use and any part thereof so
168 determined shall not be available for such grant. Such grant shall
169 require the applicant to make a good faith effort to cultivate and
170 harvest shellfish from the designated area. Such grant shall prohibit
171 the applicant from entering a contract with another person wherein the
172 applicant agrees to not cultivate or harvest shellfish for any period of
173 time, except upon approval by the shellfish commission or selectmen,
174 as applicable.

175 (b) Notwithstanding the provisions of subsection (a) of this section,
176 any owner of a utility line or public use structure that impacts on a
177 designated area shall pay to the designee or grantee the costs of
178 removing or relocating any shellfish. Nothing in this subsection shall
179 be construed to prohibit the state, the shellfish commission, the board
180 of selectmen or any designee or grantee from recovering damages
181 incurred by the state, the shellfish commission, the board of selectmen,
182 the designee or grantee caused by the installation, construction or

183 presence of such utility line or public use structure.

184 Sec. 5. Subsection (b) of section 22a-361 of the general statutes is
185 repealed and the following is substituted in lieu thereof (*Effective from*
186 *passage*):

187 (b) The commissioner, at least thirty days before approving or
188 denying an application for a permit, shall provide or require the
189 applicant to provide, by certified mail, return receipt requested, to the
190 applicant, to the Commissioner of Transportation, the Attorney
191 General, the Commissioner of Agriculture and to the chief executive
192 officer, the chairmen of the planning, zoning, harbor management and
193 shellfish commissions of each town in which such structure, fill,
194 obstruction, encroachment or dredging is to be located or work to be
195 performed, and to the owner of each franchised oyster ground and the
196 lessee of each leased oyster ground within which such work is to be
197 performed and shall publish once in a newspaper having a substantial
198 circulation in the area affected, notice of (1) the name of the applicant;
199 (2) the location and nature of the proposed activities; (3) the tentative
200 decision regarding the application; and (4) any additional information
201 the commissioner deems necessary. There shall be a comment period
202 following the public notice during which interested persons may
203 submit written comments. The commissioner may hold a public
204 hearing prior to approving or denying an application if, in the
205 commissioner's discretion, the public interest will best be served by
206 holding such hearing. The commissioner shall hold a public hearing if
207 the commissioner receives a petition requesting such hearing that is
208 signed by twenty-five or more persons and an application will: (A)
209 Significantly impact any shellfish area, as determined by the director of
210 the Bureau of Aquaculture at the Department of Agriculture, (B) have
211 interstate ramifications, or (C) involve any project that requires a
212 certificate issued pursuant to section 16-50k or approval by the Federal
213 Energy Regulatory Commission. Following such notice and comment
214 period and public hearing, if applicable, the commissioner may, in
215 whole or in part, approve, modify and approve or deny the
216 application. The commissioner shall provide to the applicant and the

217 persons set forth above, by certified mail, return receipt requested,
 218 notice of his decision. If the commissioner requires the applicant to
 219 provide the notice specified in this subsection, the applicant shall
 220 certify to the commissioner, no later than twenty days after providing
 221 such notice, that such notice has been provided in accordance with this
 222 subsection.

223 Sec. 6. Section 16-50p is amended by adding subsection (h) as
 224 follows (*Effective from passage*):

225 (NEW) (h) For purposes of this section, a public need exists for an
 226 energy facility if such facility is necessary for the reliability of the
 227 electric power supply of the state."

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>