



General Assembly

**Amendment**

January Session, 2003

LCO No. 6584

\*SB0101806584SD0\*

Offered by:

SEN. WILLIAMS, 29<sup>th</sup> Dist.

REP. WIDLITZ, 98<sup>th</sup> 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4 repealed and the following is substituted in lieu thereof (*Effective from*  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. Subsection (a) of section 16-50p of the general statutes is  
30 repealed and the following is substituted in lieu thereof (*Effective from*  
31 *passage*):

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

49 not grant a certificate, either as proposed or as modified by the council,  
50 unless it shall find and determine: (1) A public need for the facility and  
51 the basis of the need taking into consideration other feasible and  
52 prudent alternatives provided to the council by a party or intervenor  
53 that address the same public need; (2) the nature of the probable  
54 environmental impact of the facility alone and cumulatively with other  
55 facilities or proposed facilities provided to the council by a party or  
56 intervenor, including a specification of every significant adverse effect,  
57 whether alone or cumulatively with other effects, on, and conflict with  
58 the policies of the state concerning, the natural environment, ecological  
59 balance, public health and safety, scenic, historic and recreational  
60 values, forests and parks, air and water purity and fish, aquaculture  
61 and wildlife; (3) why the adverse effects or conflicts referred to in  
62 subdivision (2) of this subsection are not sufficient reason to deny the  
63 application, including why other feasible and prudent alternatives  
64 with less adverse effects or fewer conflicts which are submitted to the  
65 council by a party or intervenor do not address the same public need;  
66 (4) in the case of an electric transmission line, (A) what part, if any, of  
67 the facility shall be located overhead, (B) that the facility conforms to a  
68 long-range plan for expansion of the electric power grid of the electric  
69 systems serving the state and interconnected utility systems and will  
70 serve the interests of electric system economy and reliability, and (C)  
71 that the overhead portions of the facility, if any, are cost effective and  
72 the most appropriate alternative based on a life-cycle cost analysis of  
73 the facility and underground alternatives to such facility, and are  
74 consistent with the purposes of this chapter, with such regulations as  
75 the council may adopt pursuant to subsection (a) of section 16-50t, and  
76 with the Federal Power Commission "Guidelines for the Protection of  
77 Natural Historic Scenic and Recreational Values in the Design and  
78 Location of Rights-of-Way and Transmission Facilities" or any  
79 successor guidelines and any other applicable federal guidelines; (5) in  
80 the case of an electric or fuel transmission line, that the location of the  
81 line will not pose an undue hazard to persons or property along the  
82 area traversed by the line. The terms of any agreement entered into by  
83 the applicant and any party to the certification proceeding, or any

84 third party, in connection with the construction or operation of the  
85 facility, shall be part of the record of the proceedings and available for  
86 public inspection. The full text of any such agreement, and a statement  
87 of any consideration therefor, if not contained in the agreement, shall  
88 be filed with the council prior to the council's decision. This provision  
89 shall not require the public disclosure of proprietary information or  
90 trade secrets.

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

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

109 (2) The council shall not grant a certificate for a facility described in  
110 subdivision (1) of subsection (a) of section 16-50i which is substantially  
111 underground or underwater except where such facilities interconnect  
112 with existing overhead facilities, either as proposed or as modified by  
113 the council, unless it finds and determines: (A) A public benefit for the  
114 facility, in the case of such facility that is substantially underground,  
115 and a public need for such facility, in the case of such facility that is  
116 substantially underwater taking into consideration other feasible and

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

152 and a public need exists if such facility is necessary for the reliability of  
153 the electric power supply of the state.

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

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

186 expiration of any lease thereof which has been or which may be  
187 granted, shall, upon application to the commissioner, have the  
188 preference in the reletting of such ground for a like term to that  
189 granted in the original lease, unless such applicant, at the time for  
190 granting such application, is in arrears for rent on the original lease of  
191 such ground. Such application for such renewal or further lease shall  
192 be granted without notice or advertisement of the pendency thereof;  
193 provided no renewal or further lease of such ground shall be granted  
194 when the commissioner, for cause, ceases to lease such ground for  
195 oyster culture. All assignments or transfers of leases shall be subject to  
196 the approval of the commissioner and shall be recorded in his records.  
197 Any person who interferes with, annoys or molests another in the  
198 enjoyment of any lease authorized by the provisions of this section  
199 shall be subject to the penalties provided in section 26-237. The  
200 provisions of sections 26-212, 26-215 and 26-232 shall not apply to any  
201 shellfish grounds leased pursuant to the provisions of this section.

202 (b) Notwithstanding the provisions of subsection (a) of this section,  
203 any owner of a utility line or public use structure that impacts on a  
204 leased area shall pay to the lessee the costs of removing or relocating  
205 any shellfish. Nothing in this subsection shall be construed to prohibit  
206 the state or any lessee from recovering damages incurred by the state  
207 or the lessee caused by the installation, construction or presence of  
208 such utility line or public use structure.

209 (c) The Commissioner of Agriculture shall assess the owner of any  
210 facility that requires a certificate issued pursuant to section 16-50k or  
211 that requires approval by the Federal Energy Regulatory Commission  
212 and that crosses any grounds of Long Island Sound within the  
213 jurisdiction of the state, including, but not limited to, any shellfish area  
214 or leased, designated or granted grounds, an annual host payment fee  
215 of eighteen dollars per linear foot for the entire length of such facility,  
216 the proceeds of which shall be used for the restoration and seeding of  
217 shellfish beds in the state including, but not limited to, grants for the  
218 restoration and seeding of shellfish beds in the state. The commissioner  
219 may adopt regulations, in accordance with the provisions of chapter

220 54, concerning the requirements and application procedures for such  
221 grants.

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

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

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

253 shall be published in a newspaper having a substantial circulation in  
254 such municipality at least twice at intervals of not less than two days,  
255 the first not more than fifteen days and the last not less than two days  
256 before such hearing. A copy of the written application for the  
257 designation shall be filed in the office of the town clerk in such  
258 municipality for public inspection at least fifteen days before such  
259 hearing and shall be published in full in such newspaper.

260 (b) Notwithstanding the provisions of subsection (a) of this section,  
261 any owner of a utility line or public use structure that impacts on a  
262 designated area shall pay to the designee the costs of removing or  
263 relocating any shellfish. Nothing in this subsection shall be construed  
264 to prohibit the state, the shellfish commission, the board of selectmen  
265 or a designee from recovering damages incurred by the state, the  
266 shellfish commission, the board of selectmen or the designee caused by  
267 the installation, construction or presence of such utility line or public  
268 use structure.

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

271 (a) The selectmen of the town of Branford or shellfish commission  
272 established in accordance with section 26-257a shall have charge of all  
273 the shellfisheries and shell and shellfish grounds lying in said town not  
274 granted to others and not under the jurisdiction of the Commissioner  
275 of Agriculture, between the center line of the Farm or East Haven  
276 River and the Guilford town line and below mean high-water mark,  
277 with power to issue licenses for the taking of shellfish and shells  
278 therefrom and to designate the quantities of such shellfish and shells to  
279 be taken, the sizes of such shellfish and the methods of taking. They  
280 shall also have power to restrict the taking of such shellfish and shells  
281 from certain designated areas for periods not in excess of one year. The  
282 grants of all areas of shellfish grounds lying within the boundaries of  
283 the town of Branford upon which no tax has been paid for a period of  
284 three years preceding shall be deemed vacated and such areas shall  
285 revert to the town of Branford and become available for further grant

286 by the selectmen or shellfish commission of said town. Before making  
287 a further grant, the selectmen or shellfish commission shall determine  
288 if such grounds are suitable for public use and any part thereof so  
289 determined shall not be available for such grant. Such grant shall  
290 require the applicant to make a good faith effort to cultivate and  
291 harvest shellfish from the designated area. Such grant shall prohibit  
292 the applicant from entering a contract with another person wherein the  
293 applicant agrees to not cultivate or harvest shellfish for any period of  
294 time, except upon approval by the shellfish commission or selectmen,  
295 as applicable.

296 (b) Notwithstanding the provisions of subsection (a) of this section,  
297 any owner of a utility line or public use structure that impacts on a  
298 designated area shall pay to the designee or grantee the costs of  
299 removing or relocating any shellfish. Nothing in this subsection shall  
300 be construed to prohibit the state, the shellfish commission, the board  
301 of selectmen or any designee or grantee from recovering damages  
302 incurred by the state, the shellfish commission, the board of selectmen,  
303 the designee or grantee caused by the installation, construction or  
304 presence of such utility line or public use structure.

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

308 (b) The commissioner, at least thirty days before approving or  
309 denying an application for a permit, shall provide or require the  
310 applicant to provide, by certified mail, return receipt requested, to the  
311 applicant, to the Commissioner of Transportation, the Attorney  
312 General, the Commissioner of Agriculture and to the chief executive  
313 officer, the chairmen of the planning, zoning, harbor management and  
314 shellfish commissions of each town in which such structure, fill,  
315 obstruction, encroachment or dredging is to be located or work to be  
316 performed, and to the owner of each franchised oyster ground and the  
317 lessee of each leased oyster ground within which such work is to be  
318 performed and shall publish once in a newspaper having a substantial

319 circulation in the area affected, notice of (1) the name of the applicant;  
 320 (2) the location and nature of the proposed activities; (3) the tentative  
 321 decision regarding the application; and (4) any additional information  
 322 the commissioner deems necessary. There shall be a comment period  
 323 following the public notice during which interested persons may  
 324 submit written comments. The commissioner may hold a public  
 325 hearing prior to approving or denying an application if, in the  
 326 commissioner's discretion, the public interest will best be served by  
 327 holding such hearing. The commissioner shall hold a public hearing if  
 328 an application will: (A) Impact any shellfish area, as determined by the  
 329 director of the Bureau of Aquaculture at the Department of  
 330 Agriculture, (B) have interstate ramifications, or (C) involve any  
 331 project that requires a certificate issued pursuant to section 16-50k or  
 332 approval by the Federal Energy Regulatory Commission. Following  
 333 such notice and comment period and public hearing, if applicable, the  
 334 commissioner may, in whole or in part, approve, modify and approve  
 335 or deny the application. The commissioner shall provide to the  
 336 applicant and the persons set forth above, by certified mail, return  
 337 receipt requested, notice of his decision. If the commissioner requires  
 338 the applicant to provide the notice specified in this subsection, the  
 339 applicant shall certify to the commissioner, no later than twenty days  
 340 after providing such notice, that such notice has been provided in  
 341 accordance with this 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>