



General Assembly

**Amendment**

January Session, 2003

LCO No. 6927

\*SB0101806927SD0\*

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4 repealed and the following is substituted in lieu thereof (*Effective from*  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. Section 26-194 of the general statutes is repealed and the  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 requires a certificate issued pursuant to section 16-50k or  
86 that requires approval by the Federal Energy Regulatory Commission  
87 and that crosses any grounds of Long Island Sound within the  
88 jurisdiction of the state, including, but not limited to, any shellfish area  
89 or leased, designated or granted grounds, an annual host payment fee  
90 of eighteen dollars per linear foot for the length of such facility within  
91 the jurisdiction of the state, the proceeds of which shall be used for the  
92 restoration and seeding of shellfish beds in the state including, but not  
93 limited to, grants for the restoration and seeding of shellfish beds in  
94 the state. The commissioner may adopt regulations, in accordance with  
95 the provisions of chapter 54, concerning the requirements and  
96 application procedures for such grants.

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

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 Section 26-240 of the general statutes is repealed and the  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

102 (a) Any person desiring to plant or cultivate oysters, clams or  
103 mussels, in any waters within town jurisdiction, may apply in writing,  
104 to the shellfish commission or to selectmen authorized to act, of the  
105 town where such grounds are situated, to designate a suitable place to  
106 be used by him for that purpose, and such commission or selectmen  
107 may make such designation and such applicant shall make and stake  
108 out such place and may enclose it with buoys or with stakes, set at  
109 suitable distances and distinctly visible above the surface at high  
110 water. Such designation shall require the applicant to make a good  
111 faith effort to cultivate and harvest shellfish from the designated area.  
112 Such designation shall prohibit the applicant from entering a contract  
113 with another person that requires the applicant to refrain from  
114 cultivating or harvesting shellfish for any period of time except upon

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

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

144 Sec. 4. Section 26-266 of the general statutes is repealed and the  
145 following is substituted in lieu thereof (*Effective from passage*):

146 (a) The selectmen of the town of Branford or shellfish commission  
147 established in accordance with section 26-257a shall have charge of all

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

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

180 Sec. 5. Subsection (b) of section 22a-361 of the general statutes is  
181 repealed and the following is substituted in lieu thereof (*Effective from*

182 *passage*):

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

216 certify to the commissioner, no later than twenty days after providing  
217 such notice, that such notice has been provided in accordance with this  
218 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>