



# Senate

General Assembly

**File No. 382**

February Session, 2006

Substitute Senate Bill No. 662

*Senate, April 5, 2006*

The Committee on Environment reported through SEN. FINCH of the 22nd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

## **AN ACT CONCERNING DREDGING.**

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

1 Section 1. Section 13b-51a of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective from passage*):

3 (a) There shall be in the Department of Transportation a Connecticut  
4 Maritime Commission which shall consist of fifteen members, as  
5 follows: (1) The Commissioners of Transportation, Economic and  
6 Community Development and Environmental Protection, the Secretary  
7 of the Office of Policy and Management and the chairman of the  
8 Transportation Strategy Board, established pursuant to section 13b-  
9 57e, or their respective designees; (2) four members appointed by the  
10 Governor; and (3) one member each appointed by the president pro  
11 tempore of the Senate, the speaker of the House of Representatives, the  
12 majority leader of the Senate, the minority leader of the Senate, the  
13 majority leader of the House of Representatives and the minority  
14 leader of the House of Representatives. All appointed members shall  
15 serve for terms coterminous with their appointing authority and until

16 their successor is appointed and has qualified. Vacancies on said  
17 commission shall be filled for the remainder of the term in the same  
18 manner as original appointments.

19 (b) Appointed members of the commission shall be qualified by  
20 experience or training and shall include members of the public and (1)  
21 a representative of business and industry that is a regular user of  
22 Connecticut port freight services; (2) a member or employee of a local  
23 port authority; (3) a Connecticut port operator; (4) an operator of a  
24 marine passenger service; (5) an elected or appointed official from a  
25 coastal community; (6) a user or provider of recreational maritime  
26 services; and (7) a working member of a port labor union.

27 (c) The chairman shall be selected by the Governor from among the  
28 appointed members of the commission. The members shall annually  
29 elect one of their numbers as secretary. The commission may elect such  
30 other officers as it deems proper. Members shall receive no  
31 compensation for the performance of their duties, but shall be  
32 reimbursed for necessary expenses incurred in the performance  
33 thereof.

34 (d) The commission shall (1) advise the Commissioner of  
35 Transportation, the Commissioner of Environmental Protection, the  
36 Governor and the General Assembly concerning the state's maritime  
37 policy and operations; (2) develop and recommend to the Governor  
38 and the General Assembly a maritime policy for the state; (3) support  
39 the development of Connecticut's maritime commerce and industries,  
40 including its deep water ports; (4) recommend investments and  
41 actions, including dredging, required in order to preserve and  
42 enhanced maritime commerce and industries; (5) conduct studies and  
43 present recommendations concerning maritime issues; (6) support the  
44 development of Connecticut's ports, including; identifying new  
45 opportunities for the ports, analyzing the potential for and  
46 encouraging private investment in the ports and recommending  
47 policies which support port operations; (7) in consultation with the  
48 Department of Transportation, the Department of Environmental

49 Protection and appropriate federal agencies, develop a comprehensive  
50 plan regarding dredging in tidal waters and related disposal,  
51 monitoring and transportation of dredge materials; (8) establish an  
52 integrated, coherent plan for dredging and dredge material  
53 management, which includes beneficial use, dewatering, in-water  
54 disposal and upland disposal, as appropriate, that sets forth the state's  
55 program for these activities and provides guidance to persons  
56 planning to engage in these activities and to designate the council as  
57 the lead agency for implementing the purposes of this section and  
58 sections 2 to 5, inclusive, of this act; (9) provide for coordinated, timely  
59 decision-making by state agencies on applications for dredging,  
60 dewatering, and for the beneficial use and in-water and upland  
61 disposal of dredged materials, with the goals of providing action,  
62 following a determination that the application is complete, on  
63 applications for these activities within one hundred eighty days for  
64 applications pertaining to maintenance dredging projects and within  
65 five hundred forty days for expansion projects; (10) encourage the  
66 development of the infrastructure needed to dewater dredged  
67 materials, and to facilitate beneficial use of dredged materials in  
68 upland areas; (11) encourage and facilitate the beneficial use of  
69 dredged materials by private parties; (12) authorize the establishment  
70 of a means of supporting projects for dewatering dredged material and  
71 for beneficial use and disposal of dredged material at sites above mean  
72 high water; and (13) prepare, adopt and maintain a comprehensive  
73 plan for dredged material management for dredging that takes place in  
74 the coastal zone. Such plan shall include, but not be limited to: (A)  
75 Coastal zone and upland areas deemed suitable, depending on the  
76 nature and characteristics of the dredged material, for the beneficial  
77 use and disposal of dredged material; (B) approved sites or types of  
78 areas suitable for dewatering; and (C) protocols for monitoring  
79 dredged material disposal sites in the coastal zone. Not later than  
80 January 31, 2008, the chairman of the commission shall, compile a list  
81 of upland sites and types of areas suitable for beneficial use and  
82 disposal of dredged materials and shall adopt such revisions as may be  
83 necessary to said list not less than biennially thereafter, which list shall

84 be incorporated in the comprehensive plan for dredged material  
85 management.

86 (e) At least once each year, the commission shall hold a public  
87 hearing for the purpose of evaluating the adequacy of the state's  
88 maritime policy, facilities and support for maritime commerce and  
89 industry.

90 (f) On or before January first, annually, the commission shall  
91 submit, in writing, to the Commissioner of Transportation, the  
92 Governor and the Transportation Strategy Board (1) a list of projects  
93 which, if undertaken by the state, would support the state's maritime  
94 policy and encourage maritime commerce and industry; (2)  
95 recommendations for improvements to existing maritime policies,  
96 programs and facilities; and (3) such other recommendations as it  
97 considers appropriate. Copies of the report shall be submitted to the  
98 General Assembly pursuant to section 11-4a.

99 (g) The commission may, upon its own motion, undertake any  
100 studies it deems necessary for the improvement of a balanced public  
101 transportation system within the state, including the improvement of  
102 such system for elderly and disabled users. The commission shall have  
103 other powers and shall perform such other duties as the Commissioner  
104 of Transportation, the Governor and the General Assembly may  
105 delegate to it.

106 (h) The staff of the Department of Transportation shall be available  
107 to assist the commission.

108 (i) No member of the commission who is otherwise a public officer  
109 or employee shall suffer a forfeiture of his or her office or employment,  
110 or any loss or diminution in the rights and privileges pertaining  
111 thereto, by reason of such membership.

112 (j) A quorum of the commission for the purpose of transacting  
113 business shall exist only when there is present, in person, a majority of  
114 its voting membership. The affirmative vote of a majority of the

115 quorum shall be required for the adoption of a resolution or vote of the  
116 commission.

117 (k) The commission shall have access through the Department of  
118 Transportation to all records, reports, plans, schedules, operating rules  
119 and other documents pertaining to ports and navigable waterways of  
120 Connecticut. This subsection shall not apply to any plans, proposals,  
121 reports and other documents pertaining to current or pending  
122 negotiations with employee bargaining units.

123 (l) The Connecticut Maritime Commission shall be a successor  
124 agency to the Connecticut Port Authority in accordance with the  
125 provisions of sections 4-38d and 4-39.

126 (m) The Legislative Commissioners' Office shall, in codifying the  
127 provisions of this section, make technical, grammatical and  
128 punctuation changes as necessary to carry out the purposes of this  
129 section.

130 Sec. 2. (NEW) (*Effective from passage*) For the purposes of section 13b-  
131 51a of the general statutes and sections 2 to 5, inclusive, of this act:

132 (1) "Beneficial use" means the placement or use of dredged material  
133 for some productive purpose, and shall include, but not be limited to,  
134 uses such as beach nourishment, habitat creation and enhancement,  
135 brownfields redevelopment, landscaping, construction projects and  
136 landfill cover.

137 (2) "Coastal zone" means the coastal waters of the state and adjacent  
138 lands and other areas that are under the regulatory jurisdiction of the  
139 Department of Environmental Protection or the federal Coastal Zone  
140 Management Act.

141 (3) "Commission" means the Connecticut Maritime Commission.

142 (4) "Dewatering" means actively or passively removing water from  
143 dredged material to facilitate its beneficial use or disposal.

144 (5) "Department" means the Department of Environmental  
145 Protection.

146 (6) "Commissioner" means the Commissioner of Environmental  
147 Protection.

148 (7) "Disposal" means nontemporary relocation and placement of  
149 dredged material other than a beneficial use.

150 (8) "Disposal site" means a precise geographic area within which  
151 dredged material is disposed.

152 (9) "Dredged material" means material excavated from the waters of  
153 the state, including rock, gravel, sand, clay, silt, mud, organic material  
154 and material discarded by humans.

155 (10) "Habitat" means the specific area or environment in which a  
156 particular plant or animal lives.

157 (11) "Person" means any individual, group of individuals, firm,  
158 corporation, association, partnership or private or public entity,  
159 including a district, county, city, town or other governmental unit or  
160 agent thereof and, in the case of a corporation, any individual having  
161 active and general supervision of the properties of such corporation.

162 (12) "Site" means all contiguous land, structures and appurtenances  
163 and improvements.

164 (13) "Site operator" means the person who is responsible for the  
165 operation of activities at a beneficial use, dewatering or disposal site  
166 for dredged materials.

167 (14) "Site owner" means the person who owns all or a part of a  
168 beneficial use, dewatering or disposal site for dredged materials.

169 (15) "Upland areas" means areas that are not in the coastal zone.

170 Sec. 3. (NEW) (*Effective from passage*) (a) Not later than January 1,  
171 2008, the Connecticut Maritime Commission and the Department of

172 Environmental Protection shall jointly prepare and adopt protocols  
173 and guidelines for coordinated review and action on applications  
174 made pursuant to section 22a-361 of the general statutes, which  
175 protocols and guidelines shall include, but not be limited to: (1) The  
176 elimination of redundant and duplicative processes and reviews; (2) a  
177 joint preapplication meeting with the applicant; (3) a timely, joint  
178 determination of the completeness of applications, following a  
179 suitability determination made by the United States Army Corps of  
180 Engineers; and (4) the designation of a project manager for each  
181 dredging application who shall coordinate review of the application  
182 and serve as the single point of contact for the applicant.

183 (b) The commission, with advice from the department, shall adopt  
184 protocols and a plan for monitoring dredged material disposal sites in  
185 the coastal zone, which protocols and plan shall be an element of the  
186 comprehensive plan for dredged material management and which  
187 provide for oversight of matters by the department that are in its  
188 jurisdiction pursuant to authority delegated by federal law.

189 Sec. 4. (NEW) (*Effective from passage*) In order to accomplish the  
190 purposes of section 13b-51a of the general statutes and sections 2 to 5,  
191 inclusive, of this act to provide for beneficial use, dewatering and  
192 disposal of dredged material: (1) State agencies, departments,  
193 corporations, authorities, boards and commissions, including, but not  
194 limited to, the Department of Environmental Protection, the  
195 Department of Transportation and the Department of Economic and  
196 Community Development and political subdivisions of the state, shall  
197 cooperate with the Connecticut Maritime Commission in developing  
198 and implementing the comprehensive plan for dredged material  
199 management; (2) the Department of Environmental Protection shall  
200 seek federal acceptance of the comprehensive plan for dredged  
201 material management as an element of the state's coastal zone  
202 management program and shall pursue such federal approvals and  
203 general permits as may facilitate expeditious action on dredging  
204 applications that are consistent with the plan; (3) the Department of  
205 Economic and Community Development shall: (A) Not later than

206 October 1, 2008, make available a site to use as a dewatering site for  
207 dredged material, which site shall be available for dewatering dredged  
208 material until at least September 30, 2011, and may continue to be  
209 available thereafter for periods of not less than six months, upon the  
210 request of the commission and the approval of the Department of  
211 Economic and Community Development; and (B) with advice from the  
212 commission and the Department of Economic and Community  
213 Development, develop and implement a program to market dredged  
214 material for beneficial use by private persons, including, but not  
215 limited to, brownfield reclamation projects; and (4) the commission,  
216 with the cooperation of the Department of Economic and Community  
217 Development, shall develop a proposal for a fund, which may be used  
218 to support projects for dewatering dredged material for beneficial use  
219 and disposal of dredged material at sites above mean high water and  
220 for confined aquatic disposal of dredged materials, which proposal  
221 shall be submitted to the General Assembly not later than February 15,  
222 2008. The fund shall not be established or go into effect unless it has  
223 been approved by the General Assembly.

224 Sec. 5. (NEW) (*Effective from passage*) Not later than January 1, 2008,  
225 the Department of Environmental Protection shall adopt regulations,  
226 in accordance with the provisions of chapter 54 of the general statutes,  
227 to implement the provisions of section 13b-51a of the general statutes  
228 and sections 2 to 5, inclusive, of this act, which regulations shall  
229 include, but not be limited to, water quality, ground water protection  
230 and fish and wildlife protection, as they pertain to dredging and  
231 dredged material management. Such regulations shall address: (1)  
232 Treatment of dredging and dredged material management and  
233 monitoring as a distinct class of activities, to be regulated on the basis  
234 of the nature and characteristics of the dredged material; and (2)  
235 establishment of procedures for identification of appropriate sites and  
236 areas for upland beneficial use and disposal of dredged material.

237 Sec. 6. Subsection (c) of section 22a-92 of the general statutes is  
238 repealed and the following is substituted in lieu thereof (*Effective from*  
239 *passage*):

240 (c) In addition to the policies stated in subsections (a) and (b) of this  
241 section, the following policies are established for federal and state  
242 agencies in carrying out their responsibilities under this chapter:

243 (1) Policies concerning development, facilities and uses within the  
244 coastal boundary are: (A) To minimize the risk of spillage of petroleum  
245 products and hazardous substances, to provide effective containment  
246 and cleanup facilities for accidental spills and to disallow offshore oil  
247 receiving systems that have the potential to cause catastrophic oil spills  
248 in the Long Island Sound estuary; (B) to disallow any filling of tidal  
249 wetlands and nearshore, offshore and intertidal waters for the purpose  
250 of creating new land from existing wetlands and coastal waters which  
251 would otherwise be undevelopable, unless it is found that the adverse  
252 impacts on coastal resources are minimal; (C) to initiate in cooperation  
253 with the federal government, the Connecticut Maritime Commission  
254 and the continuing legislative committee on state planning and  
255 development a long-range planning program for the continued  
256 maintenance and enhancement of federally-maintained navigation  
257 facilities in order to effectively and efficiently plan and provide for  
258 environmentally sound dredging and disposal of dredged materials; to  
259 encourage, through the state permitting program for dredging  
260 activities, the maintenance and enhancement of existing federally-  
261 maintained navigation channels, basins and anchorages and to  
262 discourage the dredging of new federally-maintained navigation  
263 channels, basins and anchorages; (D) to reduce the need for future  
264 dredging by requiring that new or expanded navigation channels,  
265 basins and anchorages take advantage of existing or authorized water  
266 depths, circulation and siltation patterns and the best available  
267 technologies for reducing controllable sedimentation; (E) to disallow  
268 new dredging in tidal wetlands except where no feasible alternative  
269 exists and where adverse impacts to coastal resources are minimal; (F)  
270 to require that new or improved shoreline rail corridors be designed  
271 and constructed so as (i) to prevent tidal and circulation restrictions  
272 and, when practicable, to eliminate any such existing restrictions, (ii) to  
273 improve or have a negligible adverse effect on coastal access and  
274 recreation, and (iii) to enhance or not unreasonably impair the visual

275 quality of the shoreline; (G) to require that coastal highways and  
276 highway improvements, including bridges, be designed and  
277 constructed so as to minimize adverse impacts on coastal resources; to  
278 require that coastal highway and highway improvements give full  
279 consideration to mass transportation alternatives and to require that  
280 coastal highways and highway improvements where possible enhance,  
281 but in no case decrease coastal access and recreational opportunities;  
282 (H) to disallow the construction of major new airports and to  
283 discourage the substantial expansion of existing airports within the  
284 coastal boundary; to require that any expansion or improvement of  
285 existing airports minimize adverse impacts on coastal resources,  
286 recreation or access; (I) to manage the state's fisheries in order to  
287 promote the economic benefits of commercial and recreational fishing,  
288 enhance recreational fishing opportunities, optimize the yield of all  
289 species, prevent the depletion or extinction of indigenous species,  
290 maintain and enhance the productivity of natural estuarine resources  
291 and preserve healthy fisheries resources for future generations; (J) to  
292 make effective use of state-owned coastal recreational facilities in order  
293 to expand coastal recreational opportunities including the  
294 development or redevelopment of existing state-owned facilities where  
295 feasible; (K) to require as a condition in permitting new coastal  
296 structures, including but not limited to, groins, jetties or breakwaters,  
297 that access to, or along, the public beach below mean high water must  
298 not be unreasonably impaired by such structures and to encourage the  
299 removal of illegal structures below mean high water which  
300 unreasonably obstruct passage along the public beach; and (L) to  
301 promote the revitalization of inner city urban harbors and waterfronts  
302 by encouraging appropriate reuse of historically developed  
303 shorefronts, which may include minimized alteration of an existing  
304 shorefront in order to achieve a significant net public benefit, provided  
305 (i) such shorefront site is permanently devoted to a water dependent  
306 use or a water dependent public use such as public access or recreation  
307 for the general public and the ownership of any filled lands remain  
308 with the state or an instrumentality thereof in order to secure public  
309 use and benefit in perpetuity, (ii) landward development of the site is

310 constrained by highways, railroads or other significant infrastructure  
311 facilities, (iii) no other feasible, less environmentally damaging  
312 alternatives exist, (iv) the adverse impacts to coastal resources of any  
313 shorefront alteration are minimized and compensation in the form of  
314 resource restoration is provided to mitigate any remaining adverse  
315 impacts, and (v) such reuse is consistent with the appropriate  
316 municipal coastal program or municipal plan of development.

317 (2) Policies concerning coastal land and other resources within the  
318 coastal boundary are: (A) To manage estuarine embayments so as to  
319 insure that coastal uses proceed in a manner that assures sustained  
320 biological productivity, the maintenance of healthy marine  
321 populations and the maintenance of essential patterns of circulation,  
322 drainage and basin configuration; to protect, enhance and allow  
323 natural restoration of eelgrass flats except in special limited cases,  
324 notably shellfish management, where the benefits accrued through  
325 alteration of the flat may outweigh the long-term benefits to marine  
326 biota, waterfowl, and commercial and recreational finfisheries, and (B)  
327 to maintain, enhance, or, where feasible, restore natural patterns of  
328 water circulation and fresh and saltwater exchange in the placement or  
329 replacement of culverts, tide gates or other drainage or flood control  
330 structures.

331 Sec. 7. Section 22a-359 of the general statutes is repealed and the  
332 following is substituted in lieu hereof (*Effective from passage*):

333 (a) The Commissioner of Environmental Protection, in consultation  
334 with the Connecticut Maritime Commission, shall regulate dredging  
335 and the erection of structures and the placement of fill, and work  
336 incidental thereto, in the tidal, coastal or navigable waters of the state  
337 waterward of the high tide line. Any decisions made by the  
338 commissioner and said commission pursuant to this section shall be  
339 made with due regard for indigenous aquatic life, fish and wildlife, the  
340 prevention or alleviation of shore erosion and coastal flooding, the use  
341 and development of adjoining uplands, the improvement of coastal  
342 and inland navigation for all vessels, including small craft for

343 recreational purposes, the use and development of adjacent lands and  
344 properties and the interests of the state, including pollution control,  
345 water quality, recreational use of public water and management of  
346 coastal resources, with proper regard for the rights and interests of all  
347 persons concerned.

348 (b) After consultation with the Commissioner of Transportation and  
349 the Connecticut Maritime Commission, the Commissioner of  
350 Environmental Protection may consider any sunken or grounded  
351 vessel, scow, lighter or similar structure lying within the tidal, coastal  
352 or navigable waters of the state to be an encroachment subject to the  
353 provisions of this section and sections 22a-360 to 22a-363, inclusive.

354 (c) As used in this section and sections 22a-360 to 22a-363, inclusive,  
355 "high tide line" means a line or mark left upon tide flats, beaches, or  
356 along shore objects that indicates the intersection of the land with the  
357 water's surface at the maximum height reached by a rising tide. The  
358 mark may be determined by (1) a line of oil or scum along shore  
359 objects, (2) a more or less continuous deposit of fine shell or debris on  
360 the foreshore or berm, (3) physical markings or characteristics,  
361 vegetation lines, tidal gauge, or (4) by any other suitable means  
362 delineating the general height reached by a rising tide. The term  
363 includes spring high tides and other high tides that occur with periodic  
364 frequency but does not include storm surges in which there is a  
365 departure from the normal or predicted reach of the tide due to the  
366 piling up of water against a coast by strong winds such as those  
367 accompanying a hurricane or other intense storm.

368 Sec. 8. Section 22a-360 of the general statutes is repealed and the  
369 following is substituted in lieu thereof (*Effective from passage*):

370 In order to carry out the purposes of sections 22a-359 to 22a-363,  
371 inclusive, the commissioner, in consultation with the Connecticut  
372 Maritime Commission, is authorized to establish boundaries  
373 waterward of the high tide line along tidal, coastal and navigable  
374 waters for equitable regulation of use, dredging, obstruction and  
375 encroachment thereof, and to establish areas for development of small

376 boat basins or other facilities, provided such establishments shall be  
377 made in accordance with a general plan prepared for the orderly  
378 development of the area or region.

379 Sec. 9. Section 22a-361 of the general statutes is repealed and the  
380 following is substituted in lieu thereof (*Effective from passage*):

381 (a) No person, firm or corporation, public, municipal or private,  
382 shall dredge, erect any structure, place any fill, obstruction or  
383 encroachment or carry out any work incidental thereto or retain or  
384 maintain any structure, dredging or fill, in the tidal, coastal or  
385 navigable waters of the state waterward of the high tide line until such  
386 person, firm or corporation has submitted an application and has  
387 secured from said commissioner a certificate or permit for such work  
388 and has agreed to carry out any conditions necessary to the  
389 implementation of such certificate or permit. Each application for a  
390 permit, except for an emergency authorization, for any structure,  
391 filling or dredging which uses or occupies less than five thousand five  
392 hundred square feet in water surface area based on the perimeters of  
393 the project shall be accompanied by a fee equal to eighty cents per  
394 square foot provided such fee shall not be less than five hundred  
395 twenty-five dollars. Each application for a permit for any structure,  
396 filling or dredging which uses or occupies five thousand five hundred  
397 square feet or more but less than five acres in water surface area based  
398 on the perimeters of the project shall be accompanied by a fee of three  
399 thousand three hundred dollars plus ten cents per square foot for each  
400 square foot in excess of five thousand five hundred square feet. Each  
401 application for a permit for any structure, filling or dredging which  
402 uses or occupies five or more acres in water surface area based on the  
403 perimeters of the project shall be accompanied by a fee of nineteen  
404 thousand two hundred twenty-three dollars plus five hundred twenty-  
405 five dollars per acre for each acre or part thereof in excess of five acres.  
406 Each application for a mooring area or multiple mooring facility,  
407 regardless of the area to be occupied by moorings, shall be  
408 accompanied by a fee of five hundred twenty-five dollars provided  
409 that such mooring areas or facilities shall not include fixed or floating

410 docks, slips or berths. Application fees for aquaculture activities shall  
411 not be based on areal extent. The commissioner may waive or reduce  
412 any fee payable to him for (1) a tidal wetlands or coastal resource  
413 restoration or enhancement activity, (2) experimental activities or  
414 demonstration projects, (3) nonprofit academic activities, or (4) public  
415 access activities in tidal, coastal or navigable waters, provided no fee  
416 shall be waived or reduced for activities required by statute,  
417 regulation, permit, order or enforcement action. As used in this  
418 section, "resource restoration or enhancement activity" means an action  
419 taken to return a wetland or coastal resource to a prior natural  
420 condition or to improve the natural functions or habitat value of such  
421 resource, but shall not include actions required pursuant to an  
422 enforcement action of the commissioner, and "public access activities"  
423 means activities whose principal purpose is to provide or increase  
424 access for the general public to tidal, coastal or navigable waters,  
425 including, but not limited to, boardwalks, boat ramps, observation  
426 areas and fishing piers.

427 (b) The commissioner, at least thirty days before approving or  
428 denying an application for a permit, shall provide or require the  
429 applicant to provide, by certified mail, return receipt requested, to the  
430 applicant, to the Commissioner of Transportation, the Connecticut  
431 Maritime Commission, the Attorney General and the Commissioner of  
432 Agriculture and to the chief executive officer, the chairmen of the  
433 planning, zoning, harbor management and shellfish commissions of  
434 each town in which such structure, fill, obstruction, encroachment or  
435 dredging is to be located or work to be performed, and to the owner of  
436 each franchised oyster ground and the lessee of each leased oyster  
437 ground within which such work is to be performed and shall publish  
438 once in a newspaper having a substantial circulation in the area  
439 affected, notice of (1) the name of the applicant; (2) the location and  
440 nature of the proposed activities; (3) the tentative decision regarding  
441 the application; and (4) any additional information the commissioner  
442 deems necessary. There shall be a comment period following the  
443 public notice during which interested persons may submit written  
444 comments. The commissioner may hold a public hearing prior to

445 approving or denying an application if, in the commissioner's  
446 discretion, the public interest will best be served by holding such  
447 hearing. The commissioner shall hold a public hearing if the  
448 commissioner receives a petition requesting such hearing that is signed  
449 by twenty-five or more persons and an application will: (A)  
450 Significantly impact any shellfish area, as determined by the director of  
451 the Bureau of Aquaculture at the Department of Agriculture, (B) have  
452 interstate ramifications, or (C) involve any project that requires a  
453 certificate issued pursuant to section 16-50k, as amended, or approval  
454 by the Federal Energy Regulatory Commission. Following such notice  
455 and comment period and public hearing, if applicable, the  
456 commissioner may, in whole or in part, approve, modify and approve  
457 or deny the application. The commissioner shall provide to the  
458 applicant and the persons set forth above, by certified mail, return  
459 receipt requested, notice of his decision. If the commissioner requires  
460 the applicant to provide the notice specified in this subsection, the  
461 applicant shall certify to the commissioner, no later than twenty days  
462 after providing such notice, that such notice has been provided in  
463 accordance with this subsection.

464 (c) The Commissioner of Environmental Protection, in consultation  
465 with the Connecticut Maritime Commission, may adopt, in accordance  
466 with the provisions of chapter 54, regulations to carry out the  
467 provisions of sections 22a-359 to 22a-363, inclusive. Such regulations  
468 shall establish the procedures for reviewing and acting upon  
469 applications for permits, certificates of permission and emergency  
470 authorizations. The regulations shall be consistent with sections 22a-28  
471 to 22a-35, inclusive, and regulations adopted thereunder, sections 22a-  
472 90 to 22a-100, inclusive, and sections 22a-113k to 22a-113t, inclusive.  
473 They shall establish criteria for granting, denying, limiting,  
474 conditioning or modifying permits giving due regard for the impact of  
475 regulated activities and their use on the tidal, coastal or navigable  
476 waters of the state, adjoining coastal and tidal resources, tidal  
477 wetlands, navigation, recreation, erosion, sedimentation, water quality  
478 and circulation, fisheries, shellfisheries, wildlife, flooding and other  
479 natural disasters and water-dependent use opportunities as defined in

480 section 22a-93. The regulations may provide for consideration of local,  
481 state and federal programs affecting tidal, coastal and navigable waters  
482 of the state and the development of the uplands adjacent thereto and  
483 may set forth informational material describing general categories of  
484 regulated activities for the purpose of providing permit applicants  
485 with a more explicit understanding of the regulations. Such  
486 informational material shall be consistent with and shall not increase  
487 the discretion granted to the commissioner under the policies,  
488 standards and criteria contained in sections 22a-359, 22a-92 and 22a-93,  
489 and this section.

490 (d) (1) The Commissioner of Environmental Protection may issue a  
491 general permit for any minor activity regulated under sections 22a-28  
492 to 22a-35, inclusive, or sections 22a-359 to 22a-363f, inclusive, if the  
493 commissioner determines that such activity would (A) cause minimal  
494 environmental effects when conducted separately, (B) cause only  
495 minimal cumulative environmental effects, (C) not be inconsistent with  
496 the considerations and the public policy set forth in sections 22a-28 to  
497 22a-35, inclusive, and section 22a-359, as applicable, (D) be consistent  
498 with the policies of the Coastal Management Act and the  
499 comprehensive dredging plan developed by the Connecticut Maritime  
500 Commission, and (E) constitute an acceptable encroachment into  
501 public lands and waters. Such activities may include routine minor  
502 maintenance and routine minor repair of existing structures, fill,  
503 obstructions, encroachments or excavations; substantial maintenance  
504 consisting of rebuilding, reconstructing or reestablishing to a  
505 preexisting condition and dimension any structure, fill, obstruction,  
506 encroachment or excavation; maintenance dredging of areas which  
507 have been dredged and continuously maintained as serviceable;  
508 activities allowed pursuant to a perimeter permit; the removal of  
509 structures, derelict vessels, debris, rubbish or similar discarded  
510 material or unauthorized fill material; minor alterations or  
511 amendments to authorized activities consistent with the authorization  
512 for such activities; activities which have been required or allowed by  
513 an order of the commissioner; open water marsh management by or  
514 under the supervision of the Department of Public Health or

515 Department of Environmental Protection; conservation activities of or  
516 under the supervision or direction of the Department of  
517 Environmental Protection; construction of individual residential docks  
518 which do not create littoral or riparian conflicts, navigational  
519 interference, or adverse impacts to coastal resources as defined by  
520 section 22a-93, which are not located in tidal wetlands as defined by  
521 section 22a-29 and which extend no further than forty feet waterward  
522 of mean high water or to a depth of minus four feet mean low water,  
523 whichever point is more landward; installation of scientific measuring  
524 or monitoring devices; survey activities including excavation of test  
525 pits and core sampling and driving of test pilings; construction of  
526 utility lines; aquacultural activities; and installation and removal of  
527 small seasonal structures including floats and moorings. Any person  
528 conducting an activity for which a general permit has been issued shall  
529 not be required to obtain an individual permit or certificate under any  
530 other provision of sections 22a-28 to 22a-35, inclusive, or sections 22a-  
531 359 to 22a-363f, inclusive, for that activity except as provided in  
532 subdivision (3) of this subsection. A general permit shall clearly define  
533 the activity covered thereby and may include such conditions and  
534 requirements as the commissioner deems appropriate, including, but  
535 not limited to, construction timing, methodologies and durations,  
536 resource protection practices, management practices, and verification  
537 and reporting requirements. The general permit may require any  
538 person proposing to conduct any activity under the general permit to  
539 register such activity, including obtaining approval from the  
540 commissioner, before the general permit becomes effective as to such  
541 activity. Registrations and applications for approval under the general  
542 permit shall be submitted on forms prescribed by the commissioner.  
543 Any approval by the commissioner under a general permit may  
544 include conditions specific to the proposed activity to ensure  
545 consistency with the requirements for issuance of the general permit.  
546 The commissioner shall prepare, and annually amend, a list of holders  
547 of general permits under this section, which list shall be made  
548 available to the public.

549 (2) Notwithstanding any other procedures specified in sections 22a-

550 28 to 22a-35, inclusive, and sections 22a-359 to 22a-363f, inclusive, any  
551 regulations adopted thereunder, and chapter 54, the commissioner  
552 may issue a general permit in accordance with the following  
553 procedures: (A) The commissioner shall publish in a newspaper  
554 having a substantial circulation in the affected area or areas notice of  
555 intent to issue a general permit; (B) the commissioner shall allow a  
556 comment period of thirty days following publication of such notice  
557 during which interested persons may submit written comments  
558 concerning the permit to the commissioner and the commissioner shall  
559 hold a public hearing if, within said comment period, he receives a  
560 petition signed by at least twenty-five persons; (C) the commissioner  
561 may not issue the general permit until after the comment period; (D)  
562 the commissioner shall publish notice of any permit issued in a  
563 newspaper having substantial circulation in the affected area or areas;  
564 and (E) summary suspension may be ordered in accordance with  
565 subsection (c) of section 4-182. Any person may request that the  
566 commissioner issue, modify or revoke a general permit in accordance  
567 with this subsection.

568 (3) Subsequent to the issuance of a general permit, the commissioner  
569 may require any person whose activity is or may be covered by the  
570 general permit to apply for and obtain an individual permit or  
571 certificate under the provisions of sections 22a-28 to 22a-35, inclusive,  
572 or sections 22a-359 to 22a-363f, inclusive, for all or any portion of the  
573 activities covered by the general permit, if the commissioner  
574 determines that an individual permit is necessary to assure consistency  
575 with purposes and policies of such sections, the comprehensive  
576 dredging plan developed by the Connecticut Maritime Commission  
577 and the Coastal Management Act. The commissioner may require an  
578 individual permit under this subdivision in cases including, but not  
579 limited to, the following: (A) The permittee is not in compliance with  
580 the conditions of the general permit; (B) an individual permit or  
581 certificate is appropriate because of circumstances specific to the site;  
582 (C) circumstances have changed since the time the general permit was  
583 issued so that the permitted activity is no longer acceptable under the  
584 general permit; or (D) a change has occurred in relevant law. The

585 commissioner may require an individual permit or certificate under  
586 this section only if the affected person has been notified in writing that  
587 an individual permit or certificate is required. The notice shall include  
588 a brief statement of the reasons for the decision.

589 (4) The commissioner, in consultation with the Connecticut  
590 Maritime Commission, may adopt regulations, in accordance with the  
591 provisions of chapter 54, to carry out the purposes of this section.

592 (5) Notwithstanding any provision of sections 22a-359 to 22a-363f,  
593 inclusive, pending issuance of a general permit for aquaculture  
594 activities by the commissioner in accordance with this section, no  
595 permit or certificate shall be required for the placement, maintenance  
596 or removal of (A) individual structures used for aquaculture, as  
597 defined in section 22-416, including, but not limited to, cages or bags,  
598 which are located on designated state or municipal shellfish beds  
599 which structures create no adverse impacts on coastal resources or  
600 navigation over their location, or (B) any buoys used to mark such  
601 structures. Upon issuance of a general permit for aquaculture activities  
602 in accordance with this section, any aquaculture activities shall comply  
603 with the terms of such general permit or other applicable provisions of  
604 sections 22a-359 to 22a-363f, inclusive.

605 (e) No person, firm or corporation, public, municipal or private,  
606 who removes sand, gravel or other material lying waterward of the  
607 mean high water mark of the tidal, coastal or navigable waters of the  
608 state pursuant to a permit issued under this section on or after October  
609 1, 1996, shall make any beneficial or commercial use of such sand,  
610 gravel or other material except upon payment to the state of a fee of  
611 four dollars per cubic yard of such sand, gravel and other materials.  
612 Such payment shall be made at times and under conditions specified  
613 by the commissioner in such permit. No fee shall be assessed for (1) the  
614 performance of such activities on land which is not owned by the state,  
615 (2) the use of sand, gravel or other materials for beach restoration  
616 projects, or (3) ultimate disposal of such sand, gravel or other materials  
617 which does not result in an economic benefit to any person. For the

618 purposes of this section, "beneficial or commercial use" includes, but is  
619 not limited to, sale or use of sand, gravel or other materials for  
620 construction, aggregate, fill or landscaping.

621 (f) When any damage may arise to any person, firm or corporation  
622 from the taking of sand, gravel or other material as provided in  
623 subsection (e) of this section and the applicant authorized by the  
624 commissioner to take sand, gravel or other material cannot agree with  
625 such person, firm or corporation as to the amount of damage which  
626 may result from such taking, the commissioner shall require the  
627 applicant, as a condition precedent to the taking of sand, gravel or  
628 material pursuant to any permit hereunder, to post bond, with good  
629 and sufficient surety, or to deposit such sum with the State Treasurer,  
630 for the protection of any person, firm or corporation claiming damage  
631 which may result from such taking, as the commissioner determines  
632 sufficient to cover all damages, including interest from the date of the  
633 taking, which could reasonably result to any person, firm or  
634 corporation from such taking.

635 (g) The procedure for the subsequent determination of the amount  
636 of actual damage shall be as follows: The commissioner shall prefer a  
637 petition to the superior court for the judicial district of Hartford or to a  
638 judge thereof in vacation, praying that the amount of such damage  
639 may be determined. Such petition shall be accompanied by a summons  
640 signed by competent authority, to be served as process in civil action  
641 before said court, notifying the applicant and any person, firm or  
642 corporation claiming damage from the taking, to appear before said  
643 court or such judge, and thereupon said court or judge shall appoint a  
644 committee of three disinterested persons, one of whom may be a state  
645 referee, who shall be sworn before commencing their duties. Such  
646 committee, after giving reasonable notice to all parties of the time and  
647 place of hearing, shall hear and receive evidence from all parties  
648 concerning the damage and shall make an award. Such committee  
649 shall make a report of its doings and the award to said court or such  
650 judge, who may accept such report or reject it for irregular or improper  
651 conduct by the committee in the performance of its duties. If the report

652 is rejected, the court or judge shall appoint another committee, which  
 653 shall proceed in the same manner as the first committee was required  
 654 to proceed. If the report is accepted, such acceptance shall have the  
 655 effect of a judgment and the applicant shall pay the amount of any  
 656 such award to the clerk of the Superior Court for the account of the  
 657 persons entitled thereto within sixty days after the judgment is entered  
 658 or, in the case of an appeal, after the final judgment. Any party may,  
 659 within sixty days, appeal such judgment in the manner provided by  
 660 law.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	13b-51a
Sec. 2	<i>from passage</i>	New section
Sec. 3	<i>from passage</i>	New section
Sec. 4	<i>from passage</i>	New section
Sec. 5	<i>from passage</i>	New section
Sec. 6	<i>from passage</i>	22a-92(c)
Sec. 7	<i>from passage</i>	22a-359
Sec. 8	<i>from passage</i>	22a-360
Sec. 9	<i>from passage</i>	22a-361

**ENV**      *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

### **OFA Fiscal Note**

#### **State Impact:**

Agency Affected	Fund-Effect	FY 07 \$	FY 08 \$
Department of Environmental Protection	GF - Cost	Significant	Significant
Department of Transportation	TF - Cost	Significant	Significant
Department of Economic & Community Development	GF - Cost	Potential Significant	Potential Significant

Note: GF=General Fund; TF=Transportation Fund

#### **Municipal Impact:**

Municipalities	Effect	FY 07 \$	FY 08 \$
All Municipalities	STATE MANDATE - Cost	Potential Indeterminate	Potential Indeterminate

### **Explanation**

The bill requires the Connecticut Maritime Commission (CMC) to develop a comprehensive dredging plan(s), in consultation with the Department of Environmental Protection (DEP), the Department of Transportation (DOT) and appropriate federal agencies. Currently, the Army Corps of Engineers is responsible for obtaining federal dollars to undertake a comprehensive dredging plan for the state. The Army Corps estimate that the plan for Long Island Sound would take over 2 years and \$15 million dollars. The CMC does not have staff. Therefore it is anticipated that the DEP and DOT would be responsible for the development of any plan. The bill also requires CMC and DEP to adopt protocols and guidelines for reviewing and action on dredging and structure applications and protocols for monitoring dredged material disposal sites in the coastal zone. The bill also requires the DEP to adopt regulations. It is estimated that to undertake these duties the DEP and the DOT would together require 12 additional employees at a cost of approximately \$750,000 in FY 07

plus fringe benefits<sup>1</sup>. At least half of these employees (6) would be ongoing costs to administer the program/process after the plan is developed.

The requirements in the bill concerning cooperation by the state and municipalities in development and implementation of the plan would increase costs to all involved. The exact impact is indeterminate at this time and would vary depending upon the municipality and agency.

It is anticipated that the Department of Economic and Community Development (DECD) would incur additional costs to make a site available to use a dewatering site for dredged material and develop and implement a program to market dredged material for beneficial use by private entities. DECD could incur costs for Environmental Impact Evaluation of the site which could be in the hundreds of thousands of dollars. Since no specific dredging site is mentioned in the bill, costs associated with making a site available to be used as a dewatering site are unknown. It is also anticipated that the DECD would require funds in the amount of \$100,000 to prepare a market plan. Future costs would be incurred for the fund to be created to support projects for dewatering dredged material and disposal of dredged material. If the fund is approved, there will be additional costs to capitalize it which are unknown at this time. DECD would potentially need a fund administrator at a cost of \$55,000 plus fringe benefits starting in FY 08.

### ***The Out Years***

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<sup>1</sup> The fringe benefit costs for state employees are budgeted centrally in the Miscellaneous Accounts administered by the Comptroller. The estimated first year fringe benefit rate as a percentage of payroll is 23.6%, effective July 1, 2005. The first year fringe benefit costs for new positions do not include pension costs. The state's pension contribution is based upon the prior year's certification by the actuary for the State Employees Retirement System (SERS). The SERS 2005-06 fringe benefit rate is 34.7%, which when combined with the non pension fringe benefit rate would total 58.3%.

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

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**OLR Bill Analysis****sSB 662*****AN ACT CONCERNING DREDGING.*****SUMMARY:**

This bill requires the Connecticut Maritime Commission (CMC) to develop a comprehensive dredging plan, in consultation with the Department of Environmental Protection (DEP), the Department of Transportation (DOT), and appropriate federal agencies. It specifies what must be covered, including providing coordinated, timely decision-making by state agencies on applications for dredging, dewatering, and the beneficial use and in-water and upland disposal of dredged material.

By law, CMC must advise the DOT commissioner, the governor, and the General Assembly on the state's maritime policy and operations, among other things. The bill requires CMC to advise DEP as well.

The bill requires DEP to consult with CMC on dredging matters and adopt regulations for such matters. DEP must consider the dredging plan in its permitting and notify CMC of its action permit applications.

EFFECTIVE DATE: October 1, 2006

**§§ 1-5 — DREDGING PLANNING****§ 1 CMC — Responsibilities**

CMC must, in consultation with DEP, DOT, and other agencies, develop a comprehensive plan for dredging in tidal waters and for disposing of, monitoring, and transporting dredged material. "Dredged material" means material excavated from the waters of the state, including rock, gravel, sand, clay, silt, mud, organic material and material discarded by people.

CMC, in consultation with these entities, must establish an integrated, coherent plan for dredging and managing dredged material. This includes beneficial use; dewatering (removing water from dredged material to facilitate disposal or productive use); in-water disposal and upland disposal as appropriate. It must set forth the state's program for these activities, provide guidance to persons planning to engage in them, and designate the council as the lead agency for implementing the program.

CMC, in consultation with the other entities, must provide for coordinated, timely decision-making by state agencies on applications for dredging, dewatering, and for the beneficial use, and in-water and upland disposal of dredged material, with the goals of providing action, when an application is complete, for these activities within 180 days for maintenance dredging project applications and 540 for expansion projects.

CMC, in consultation with the entities, must also:

1. encourage infrastructure development necessary to dewater dredged material and facilitate its beneficial use in upland areas;
2. encourage and facilitate the beneficial use of dredged material by private parties; and
3. authorize ways to support projects for dewatering dredged material, and for its beneficial use and disposal at sites above mean high water.

### ***Dredged Material Management Plan***

The CMC commission must also prepare, adopt, and maintain a comprehensive plan for managing material dredged in the coastal state waters and adjacent lands and other areas under DEP's regulatory jurisdiction or the federal Coastal Zone Management Act (Coastal Zone).

The plan must include the coastal zone and upland areas deemed suitable, depending on the nature and characteristics of the dredged material, for the material's beneficial use; approved sites or areas suitable for dewatering; and protocols for monitoring dredged material disposal sites in the coastal zone.

The CMC chairman must, by January 31, 2008, compile a list of upland sites and types of areas suitable for beneficial use and disposal of dredged material and revise the list, as necessary, at least biennially thereafter. The list must be incorporated in the comprehensive plan for dredged material management.

### **§ 3 — Application Review**

The bill requires CMC and DEP, by January 1, 2008, to jointly prepare and adopt protocols and guidelines for coordinated review and action on dredging and structure applications.

The protocols and guidelines must provide for:

1. eliminating redundant and duplicative processes and reviews;
2. meeting jointly in the pre-application process with the applicant;
3. determining jointly, in a timely fashion, that an application is complete, when the U.S. Army Corps of Engineers determines the application is suitable; and
4. designating for each dredging application a project manager who coordinates application review and serves as the single point of contact for the applicant.

CMC, with DEP's advice, must adopt protocols and a plan for monitoring dredged material disposal sites in the coastal zone. The protocols and plan must be an element of the comprehensive plan for managing dredged material and provide DEP oversight of matters in its jurisdiction as delegated by federal law.

### **§ 4 — Achieving Goals**

The bill requires the following to cooperate with CMC in developing and implementing the comprehensive plan for dredge material management: state agencies, departments, corporations, authorities, boards and commissions, including DEP, DOT, the Department of Economic and Community Development (DECD) and municipal governments.

DEP must seek the plan's federal acceptance as an element of the state's coastal zone management program and must pursue federal approvals and general permits that facilitate action on dredging applications consistent with the plan.

DECD must make a site available to use as a dewatering site for dredged material, by October 1, 2008. The site must be available for dewatering dredged material until at least September 30, 2011, and may continue to be available after that for up to six months, upon the request of CMC and DECD approval. DECD must also develop and implement a program, with CMC's advice, to market dredged material for beneficial use by private entities, including brownfield reclamation projects.

CMC, with DECD's cooperation, must develop a proposal for a fund, which may be used to support projects for (1) dewatering dredged material for beneficial use, (2) disposal of dredged material at sites above mean high water, and (3) confined aquatic disposal of dredged material. The proposal must be submitted to the General Assembly by February 15, 2008. The fund cannot be established or go into effect unless the General Assembly approves it.

#### **§ 5 — Regulations for Dredging Planning and Goals**

DEP, by January 1, 2008, must adopt regulations to implement the dredging planning and requirements. The regulations must include water quality, ground water protection, and fish and wildlife protection, as they pertain to dredging and dredged material management.

The regulations must address (1) dredging treatment and dredged

material management and monitoring as a distinct class of activities, to be regulated on the basis of the nature and characteristics of the dredged material and (2) establish procedures for identifying appropriate sites and areas for upland beneficial use and disposal of dredged material.

## § 2 — Definitions

The bill also contains numerous definitions. Under the bill:

1. “Beneficial use” means the placement or use of dredged material for some productive purpose, and uses such as beach nourishment, habitat creation and enhancement, brownfields redevelopment, landscaping, construction projects and landfill cover and
2. “upland areas” means areas that are not in the coastal zone.

## BACKGROUND

### *CMC's Purpose*

The 15-member CMC in DOT must (1) advise the commissioner, governor, and legislature on maritime policy and operations; (2) develop and recommend maritime policy to the governor and legislature; (3) support development of Connecticut's maritime commerce and industries, including its deepwater ports; (4) recommend investments and actions, including dredging, required to preserve and enhance them; (5) conduct studies and make recommendations on maritime issues; and (6) support Connecticut port development, including identifying new opportunities, analyzing the potential for and encouraging private port investment, and recommending policies that support port operations.

## COMMITTEE ACTION

Environment Committee

Joint Favorable Substitute

Yea 27 Nay 0 (03/20/2006)