



# Senate

General Assembly

**File No. 282**

February Session, 2012

Senate Bill No. 376

*Senate, April 5, 2012*

The Committee on Environment reported through SEN. MEYER of the 12th Dist., Chairperson of the Committee on the part of the Senate, that the bill ought to pass.

## **AN ACT CONCERNING THE COASTAL MANAGEMENT ACT AND SHORELINE FLOOD AND EROSION CONTROL STRUCTURES.**

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

1 Section 1. Subsection (b) of section 22a-92 of the general statutes is  
2 repealed and the following is substituted in lieu thereof (*Effective from*  
3 *passage*):

4 (b) In addition to the policies stated in subsection (a) of this section,  
5 the following policies are established for federal, state and municipal  
6 agencies in carrying out their responsibilities under this chapter:

7 (1) Policies concerning development, facilities and uses within the  
8 coastal boundary are: (A) To manage uses in the coastal boundary  
9 through existing municipal planning, zoning and other local  
10 regulatory authorities and through existing state structures, dredging,  
11 wetlands, and other state siting and regulatory authorities, giving  
12 highest priority and preference to water-dependent uses and facilities  
13 in shorefront areas; (B) to locate and phase sewer and water lines so as

14 to encourage concentrated development in areas which are suitable for  
15 development; and to disapprove extension of sewer and water services  
16 into developed and undeveloped beaches, barrier beaches and tidal  
17 wetlands except that, when necessary to abate existing sources of  
18 pollution, sewers that will accommodate existing uses with limited  
19 excess capacity may be used; (C) to promote, through existing state  
20 and local planning, development, promotional and regulatory  
21 authorities, the development, reuse or redevelopment of existing  
22 urban and commercial fishing ports giving highest priority and  
23 preference to water dependent uses, including but not limited to  
24 commercial and recreational fishing and boating uses; to disallow uses  
25 which unreasonably congest navigation channels, or unreasonably  
26 preclude boating support facilities elsewhere in a port or harbor; and  
27 to minimize the risk of oil and chemical spills at port facilities; (D) to  
28 require that structures in tidal wetlands and coastal waters be  
29 designed, constructed and maintained to minimize adverse impacts on  
30 coastal resources, circulation and sedimentation patterns, water  
31 quality, and flooding and erosion, to reduce to the maximum extent  
32 practicable the use of fill, and to reduce conflicts with the riparian  
33 rights of adjacent landowners; (E) to disallow the siting within the  
34 coastal boundary of new tank farms and other new fuel and chemical  
35 storage facilities which can reasonably be located inland and to require  
36 any new storage tanks which must be located within the coastal  
37 boundary to abut existing storage tanks or to be located in urban  
38 industrial areas and to be adequately protected against floods and  
39 spills; (F) to make use of rehabilitation, upgrading and improvement of  
40 existing transportation facilities as the primary means of meeting  
41 transportation needs in the coastal area; (G) to encourage increased  
42 recreational boating use of coastal waters, where feasible, by (i)  
43 providing additional berthing space in existing harbors, (ii) limiting  
44 non-water-dependent land uses that preclude boating support  
45 facilities, (iii) increasing state-owned launching facilities, and (iv)  
46 providing for new boating facilities in natural harbors, new protected  
47 water areas and in areas dredged from dry land; (H) to protect coastal  
48 resources by requiring, where feasible, that such boating uses and

49 facilities (i) minimize disruption or degradation of natural coastal  
50 resources, (ii) utilize existing altered, developed or redevelopment  
51 areas, (iii) are located to assure optimal distribution of state-owned  
52 facilities to the state-wide boating public, and (iv) utilize ramps and  
53 dry storage rather than slips in environmentally sensitive areas; (I) to  
54 protect and where feasible, upgrade facilities serving the commercial  
55 fishing and recreational boating industries; to maintain existing  
56 authorized commercial fishing and recreational boating harbor space  
57 unless the demand for these facilities no longer exists or adequate  
58 space has been provided; to design and locate, where feasible,  
59 proposed recreational boating facilities in a manner which does not  
60 interfere with the needs of the commercial fishing industry; and (J) to  
61 require reasonable mitigation measures where development would  
62 adversely impact historical, archaeological, or paleontological  
63 resources that have been designated by the state historic preservation  
64 officer.

65 (2) Policies concerning coastal land and water resources within the  
66 coastal boundary are: (A) To manage coastal bluffs and escarpments so  
67 as to preserve their slope and toe; to discourage uses which do not  
68 permit continued natural rates of erosion and to disapprove uses that  
69 accelerate slope erosion and alter essential patterns and supply of  
70 sediments to the littoral transport system; (B) to manage rocky  
71 shorefronts so as to insure that development proceeds in a manner  
72 which does not irreparably reduce the capability of the system to  
73 support a healthy intertidal biological community; to provide feeding  
74 grounds and refuge for shorebirds and finfish, and to dissipate and  
75 absorb storm and wave energies; (C) to preserve the dynamic form and  
76 integrity of natural beach systems in order to provide critical wildlife  
77 habitats, a reservoir for sand supply, a buffer for coastal flooding and  
78 erosion, and valuable recreational opportunities; to insure that coastal  
79 uses are compatible with the capabilities of the system and do not  
80 unreasonably interfere with natural processes of erosion and  
81 sedimentation, and to encourage the restoration and enhancement of  
82 disturbed or modified beach systems; (D) to manage intertidal flats so  
83 as to preserve their value as a nutrient source and reservoir, a healthy

84 shellfish habitat and a valuable feeding area for invertebrates, fish and  
85 shorebirds; to encourage the restoration and enhancement of degraded  
86 intertidal flats; to allow coastal uses that minimize change in the  
87 natural current flows, depth, slope, sedimentation, and nutrient  
88 storage functions and to disallow uses that substantially accelerate  
89 erosion or lead to significant despoliation of tidal flats; (E) to preserve  
90 tidal wetlands and to prevent the despoliation and destruction thereof  
91 in order to maintain their vital natural functions; to encourage the  
92 rehabilitation and restoration of degraded tidal wetlands and where  
93 feasible and environmentally acceptable, to encourage the creation of  
94 wetlands for the purposes of shellfish and finfish management, habitat  
95 creation and dredge spoil disposal; (F) to manage coastal hazard areas  
96 so as to insure that development proceeds in such a manner that  
97 hazards to life and property are minimized and to promote  
98 nonstructural solutions to flood and erosion problems except in those  
99 instances where structural alternatives prove unavoidable and  
100 necessary to protect existing inhabited structures, infrastructural  
101 facilities or water dependent uses; (G) to promote, through existing  
102 state and local planning, development, promotional and regulatory  
103 programs, the use of existing developed shorefront areas for marine-  
104 related uses, including but not limited to, commercial and recreational  
105 fishing, boating and other water-dependent commercial, industrial and  
106 recreational uses; (H) to manage undeveloped islands in order to  
107 promote their use as critical habitats for those bird, plant and animal  
108 species which are indigenous to such islands or which are increasingly  
109 rare on the mainland; to maintain the value of undeveloped islands as  
110 a major source of recreational open space; and to disallow uses which  
111 will have significant adverse impacts on islands or their resource  
112 components; (I) to regulate shoreland use and development in a  
113 manner which minimizes adverse impacts upon adjacent coastal  
114 systems and resources; and (J) to maintain the natural relationship  
115 between eroding and depositional coastal landforms and to minimize  
116 the adverse impacts of erosion and sedimentation on coastal land uses  
117 through the promotion of nonstructural mitigation measures.  
118 Structural solutions are permissible when necessary and unavoidable

119 for the protection of infrastructural facilities, water-dependent uses, or  
 120 existing inhabited structures, and where there is no feasible, less  
 121 environmentally damaging alternative and where all reasonable  
 122 mitigation measures and techniques have been provided to minimize  
 123 adverse environmental impacts. A coastal site plan filed pursuant to  
 124 section 22a-109 for a shoreline flood and erosion control structure is  
 125 consistent with all applicable goals and policies of this subsection if  
 126 such site plan complies with section 2 of this act.

127       Sec. 2. (NEW) (*Effective from passage*) (a) Subject to the provisions of  
 128 subsection (b) of this section, a municipal zoning commission shall find  
 129 a coastal site plan for a shoreline flood and erosion control structure  
 130 filed pursuant to section 22a-109 of the general statutes is consistent  
 131 with all applicable goals and policies of subsection (b) of section 22a-92  
 132 of the general statutes, as amended by this act, if: (1) The applicant  
 133 submitting such coastal site plan has submitted three alternative  
 134 options with such site plan, and (2) such alternative options are  
 135 certified by a structural engineer to be consistent with all applicable  
 136 goals and policies of subsection (b) of section 22a-92 of the general  
 137 statutes, as amended by this act.

138       (b) If a municipal zoning commission does not agree with a  
 139 structural engineer's certification made pursuant to subdivision (2) of  
 140 subsection (a) of this section, such commission shall, as a condition of  
 141 approval of the coastal site plan, propose an alternative option that is  
 142 consistent with the applicable goals and policies of subsection (b) of  
 143 section 22a-92 of the general statutes, as amended by this act. Such  
 144 alternative option shall not be impractical or cost prohibitive. For  
 145 purposes of this subsection, "cost prohibitive" means having a total  
 146 project cost of not less than fifteen per cent of the assessed value of all  
 147 structures located on the property for which the plan has been filed.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	22a-92(b)
Sec. 2	<i>from passage</i>	New section

**ENV**      *Joint Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

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***OFA Fiscal Note***

***State Impact:*** None

***Municipal Impact:***

<b>Municipalities</b>	<b>Effect</b>	<b>FY 13 \$</b>	<b>FY 14 \$</b>
Various Municipalities	Potential Cost	Potential Significant	Potential Significant

***Explanation***

The bill requires a municipality, if it does not agree with a structural engineer's certification of a coastal site plan, to propose an alternative option. Municipalities may incur significant costs if they need to hire structural engineers to develop alternative coastal site plans.

***The Out Years***

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation and number of occurrences municipalities do not agree with structural engineer's certifications.

**OLR Bill Analysis****SB 376*****AN ACT CONCERNING THE COASTAL MANAGEMENT ACT AND SHORELINE FLOOD AND EROSION CONTROL STRUCTURES.*****SUMMARY:**

By law, a coastal site plan for a proposed shoreline flood and erosion control structure must be filed with a municipal zoning commission to determine whether it conforms with (1) the state Coastal Management Act (CMA), (2) the municipality's zoning regulations, and (3) applicable Department of Energy and Environmental Protection permit requirements.

This bill requires a municipal zoning commission to find a coastal site plan for such a structure consistent with applicable CMA policies to balance development and protection of the state's coastal resources in the coastal boundary if:

1. the applicant submitting the plan provides three alternative options, and
2. a structural engineer certifies that the options are consistent with such CMA policies.

If the commission does not agree with the structural engineer's certification, it must, as a condition of approving the plan, propose an alternative option that is (1) consistent with the same policies, (2) practical, and (3) have a total project cost of less than 15% of the assessed value of all structures on the property. Under the bill, a coastal site plan for a shoreline flood and erosion control structure that complies with these provisions is consistent with applicable CMA policies.

The bill also makes a technical change.

EFFECTIVE DATE: Upon passage

## **BACKGROUND**

### ***Shoreline Flood and Erosion Control Structure***

By law, a “shoreline flood and erosion control structure” is any structure to control flooding or erosion from tidal, coastal, or navigable waters, including breakwaters; bulkheads; groins; jetties; revetments; riprap; seawalls; and placing concrete, rocks, or other significant barriers to flood water flows or sediment movement along the shoreline (CGS § 22a-109(c)).

Coastal site plans for such structures must show that the activity is consistent with CMA goals and policies which include, among other things:

1. discouraging uses that do not allow continued natural rates of erosion;
2. preserving the dynamic form and integrity of natural beach systems to provide critical wildlife habitat, a sand supply reservoir, a buffer for coastal flooding and erosion, and recreational opportunities; and
3. promoting nonstructural solutions to flood and erosion problems except where structural alternatives are unavoidable and necessary to protect certain structures, facilities, and uses (CGS § 22a-92(b)).

### ***Coastal Boundary***

The “coastal boundary” is the furthest inland of (1) the 100-year-frequency coastal flood zone, (2) a 1,000-foot setback from the mean high-water mark, or (3) a 1,000-foot setback from the inland boundary of the tidal wetlands (CGS § 22a-94(b)).

### ***Related Bills***

sHB 5128, favorably reported out by the Environment Committee, makes several changes to the CMA including, among other things,

requiring the consideration of sea level rise in coastal site plan reviews and preventing certain reconstruction after a casualty loss.

The Environment Committee also reported out SB 351, which adds cemetery and burial grounds to the list of land uses that can be protected by structural solutions in the coastal boundary.

**COMMITTEE ACTION**

Environment Committee

Joint Favorable

Yea 16    Nay 13    (03/21/2012)