



Senate Bill No. 351

Public Act No. 12-100

AN ACT CONCERNING CERTAIN CEMETERY EROSION MITIGATION EFFORTS WITHIN THE COASTAL BOUNDARY AND THE APPEAL OF CERTAIN DECISIONS UNDER THE WATER POLLUTION CONTROL ACT.

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

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 Subsection (b) of section 22a-92 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

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

(1) Policies concerning development, facilities and uses within the coastal boundary are: (A) To manage uses in the coastal boundary through existing municipal planning, zoning and other local regulatory authorities and through existing state structures, dredging, wetlands, and other state siting and regulatory authorities, giving highest priority and preference to water-dependent uses and facilities in shorefront areas; (B) to locate and phase sewer and water lines so as to encourage concentrated development in areas which are suitable for development; and to disapprove extension of sewer and water services into developed and undeveloped beaches, barrier beaches and tidal

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wetlands except that, when necessary to abate existing sources of pollution, sewers that will accommodate existing uses with limited excess capacity may be used; (C) to promote, through existing state and local planning, development, promotional and regulatory authorities, the development, reuse or redevelopment of existing urban and commercial fishing ports giving highest priority and preference to water dependent uses, including but not limited to commercial and recreational fishing and boating uses; to disallow uses which unreasonably congest navigation channels, or unreasonably preclude boating support facilities elsewhere in a port or harbor; and to minimize the risk of oil and chemical spills at port facilities; (D) to require that structures in tidal wetlands and coastal waters be designed, constructed and maintained to minimize adverse impacts on coastal resources, circulation and sedimentation patterns, water quality, and flooding and erosion, to reduce to the maximum extent practicable the use of fill, and to reduce conflicts with the riparian rights of adjacent landowners; (E) to disallow the siting within the coastal boundary of new tank farms and other new fuel and chemical storage facilities which can reasonably be located inland and to require any new storage tanks which must be located within the coastal boundary to abut existing storage tanks or to be located in urban industrial areas and to be adequately protected against floods and spills; (F) to make use of rehabilitation, upgrading and improvement of existing transportation facilities as the primary means of meeting transportation needs in the coastal area; (G) to encourage increased recreational boating use of coastal waters, where feasible, by (i) providing additional berthing space in existing harbors, (ii) limiting non-water-dependent land uses that preclude boating support facilities, (iii) increasing state-owned launching facilities, and (iv) providing for new boating facilities in natural harbors, new protected water areas and in areas dredged from dry land; (H) to protect coastal resources by requiring, where feasible, that such boating uses and facilities (i) minimize disruption or degradation of natural coastal

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

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

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disturbed or modified beach systems; (D) to manage intertidal flats so as to preserve their value as a nutrient source and reservoir, a healthy shellfish habitat and a valuable feeding area for invertebrates, fish and shorebirds; to encourage the restoration and enhancement of degraded intertidal flats; to allow coastal uses that minimize change in the natural current flows, depth, slope, sedimentation, and nutrient storage functions and to disallow uses that substantially accelerate erosion or lead to significant despoliation of tidal flats; (E) to preserve tidal wetlands and to prevent the despoliation and destruction thereof in order to maintain their vital natural functions; to encourage the rehabilitation and restoration of degraded tidal wetlands and where feasible and environmentally acceptable, to encourage the creation of wetlands for the purposes of shellfish and finfish management, habitat creation and dredge spoil disposal; (F) to manage coastal hazard areas so as to insure that development proceeds in such a manner that hazards to life and property are minimized and to promote nonstructural solutions to flood and erosion problems except in those instances where structural alternatives prove unavoidable and necessary to protect existing inhabited structures, infrastructural facilities or water dependent uses; (G) to promote, through existing state and local planning, development, promotional and regulatory programs, the use of existing developed shorefront areas for marine-related uses, including but not limited to, commercial and recreational fishing, boating and other water-dependent commercial, industrial and recreational uses; (H) to manage undeveloped islands in order to promote their use as critical habitats for those bird, plant and animal species which are indigenous to such islands or which are increasingly rare on the mainland; to maintain the value of undeveloped islands as a major source of recreational open space; and to disallow uses which will have significant adverse impacts on islands or their resource components; (I) to regulate shoreland use and development in a manner which minimizes adverse impacts upon adjacent coastal systems and resources; and (J) to maintain the natural relationship

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between eroding and depositional coastal landforms and to minimize the adverse impacts of erosion and sedimentation on coastal land uses through the promotion of nonstructural mitigation measures. Structural solutions are permissible when necessary and unavoidable for the protection of infrastructural facilities, cemetery or burial grounds, water-dependent uses, or existing inhabited structures, and where there is no feasible, less environmentally damaging alternative and where all reasonable mitigation measures and techniques have been provided to minimize adverse environmental impacts.

Sec. 2. Section 22a-6h of the general statutes is amended by adding subsection (d) as follows (*Effective October 1, 2012*):

(NEW) (d) Not later than thirty days after the date on which the commissioner publishes or causes to be published notice of the commissioner's tentative determination regarding an application under Section 401 of the federal Water Pollution Control Act, 33 USC 466, such applicant may submit a written request to the commissioner to conduct a hearing on such application in accordance with the provisions of chapter 54. The commissioner shall grant any such request provided such request is submitted in writing and filed in a timely manner. Any person that is aggrieved by the commissioner's final decision on such application may appeal such decision to the Superior Court, in accordance with section 4-183.

Sec. 3. Subsection (b) of section 22a-361 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2012*):

(b) The commissioner, at least thirty days before approving or denying an application for a permit, shall provide or require the applicant to provide [] notice by certified mail, return receipt requested, or by electronic means to the applicant, to the Commissioner of Transportation, the Attorney General and the

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Commissioner of Agriculture and to the chief executive officer, the chairmen of the planning, zoning, harbor management and shellfish commissions of each town in which such structure, fill, obstruction, encroachment or dredging is to be located or work to be performed, and to the owner of each franchised oyster ground and the lessee of each leased oyster ground within which such work is to be performed and shall publish such notice once in a newspaper having a substantial circulation in the area affected. [,] Such notice [of] shall contain (1) the name of the applicant; (2) the location and nature of the proposed activities; (3) the tentative decision regarding the application; and (4) any additional information the commissioner deems necessary. There shall be a comment period following the public notice during which interested persons may submit written comments. The commissioner may hold a public hearing prior to approving or denying an application if, in the commissioner's discretion, the public interest will best be served by holding such hearing. The commissioner shall hold a public hearing if the commissioner receives: [a petition] (A) A written request for such public hearing from the applicant, or (B) a petition, signed by twenty-five or more persons requesting such public hearing [that is signed by twenty-five or more persons and] on an application that will: [(A)] (i) Significantly impact any shellfish area, as determined by the director of the Bureau of Aquaculture at the Department of Agriculture, [(B)] (ii) have interstate ramifications, or [(C)] (iii) involve any project that requires a certificate issued pursuant to section 16-50k or approval by the Federal Energy Regulatory Commission. Following such notice and comment period and public hearing, if applicable, the commissioner may, in whole or in part, approve, modify and approve or deny the application. The commissioner shall provide to the applicant and the persons set forth above, by certified mail, return receipt requested, or by electronic means, notice of the commissioner's decision. If the commissioner requires the applicant to provide the notice specified in this subsection, the applicant shall certify to the commissioner, [no] not later than twenty days after providing such

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notice, that such notice has been provided in accordance with this subsection. Any person who is aggrieved by the commissioner's final decision on such application may appeal such decision to the Superior Court in accordance with section 4-183.