
OLR Bill Analysis

SB 376 (File 282, as amended by Senate "A" and "B")*

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

SUMMARY:

This bill makes several changes in the Coastal Management Act (CMA) and laws regulating certain activities in the state's tidal, coastal, or navigable waters. Among other things, it:

1. modifies CMA's general goals and policies to consider (a) private property owners' rights when developing, preserving, or using coastal resources and (b) the potential impact of a rise in sea level when planning coastal development to minimize certain needs or effects (§ 1);
2. expands the list of land uses that can be protected by structural solutions under certain circumstances to include cemetery and burial grounds and inhabited structures built by January 1, 1995 (§ 1);
3. requires a municipal zoning commission to approve a coastal site plan for a shoreline flood and erosion control structure under certain circumstances (§ 3);
4. requires a municipal zoning commission or the Department of Energy and Environmental Protection (DEEP) commissioner to propose structure alternatives or mitigation measures and techniques if they deny a shoreline flood and erosion control structure application for certain reasons (§ 1); and
5. replaces the statutory definition of "high tide line" with one for "coastal jurisdiction line" (§§ 4-8).

The bill also requires the Office of Policy and Management (OPM) to consider coastal erosion when revising the state Plan of Conservation and Development after October 1, 2012. It authorizes establishing certain programs and preparing a study related to shoreline protection and management.

It also makes technical and conforming changes.

*Senate Amendment "A" replaces the original bill (File 282), which, among other things, required a municipal zoning commission to find a coastal site plan for a shoreline flood and erosion control structure consistent with certain CMA policies if an applicant provided (1) three alternative options to the plan and (2) a certification from a structural engineer. The original bill required a zoning commission disagreeing with the certification to propose an alternative option.

*Senate Amendment "B" modifies the conditions for approving a coastal site plan for a shoreline flood and erosion control structure.

EFFECTIVE DATE: October 1, 2012; except the provision concerning coastal site plans for shoreline flood and erosion control structures, which is effective upon passage.

§ 2 — DEFINITION OF RISE IN SEA LEVEL

The bill defines a "rise in sea level" as the average of the most recent equivalent per decade rise in state tidal and coastal waters surface level documented for annual, decadal, or centenary periods at any state site specified in National Oceanic and Atmospheric online or printed publications.

§ 1 — COASTAL MANAGEMENT ACT GOALS AND POLICIES

The CMA sets general goals and policies to balance development and protection of the state's coastal resources. The bill adds to these goals and policies consideration of (1) private property owners' rights when developing, preserving, or using coastal resources and (2) the potential impact of a rise in sea level, in addition to coastal flooding and erosion patterns, as required under current law, when planning coastal development. Such consideration must minimize shoreline

armoring to protect future new development. The law already requires (1) minimizing damage to and destruction of life and property and (2) reducing public expense to protect future development.

The CMA also provides policies for federal, state, and local agencies to follow when regulating development, facilities, and uses in the coastal boundary. Under current law, CMA policy allows structural solutions to protect certain facilities, uses, or inhabited structures when (1) it is necessary and unavoidable; (2) there is no feasible, less environmentally damaging alternative; and (3) all reasonable mitigation measures and techniques have been provided. The bill extends this policy to protect cemetery and burial grounds and inhabited structures built by January 1, 1995.

By law, CMA policy promotes nonstructural solutions to flood and erosion problems when managing coastal hazard areas unless structural solutions are unavoidable and needed to protect, among other things, existing inhabited structures (built before January 1, 1980). The bill expands this exception to include inhabited structures built by January 1, 1995.

§§ 1 & 3 — SHORELINE FLOOD AND EROSION CONTROL STRUCTURES

Definition

The bill specifically excludes from the definition of “shoreline flood and erosion control structure” any activity to restore or enhance tidal wetlands, beaches, dunes, or intertidal flat such as living shoreline projects. By law, such a structure controls flooding or erosion from tidal, coastal, or navigable waters, and includes 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. The law, unchanged by the bill, already excludes from the definition certain additions, reconstructions, changes, or adjustments to a walled and roofed building.

Coastal Site Plan Approval

The bill requires a municipal zoning commission to approve a coastal site plan for a shoreline flood and erosion control structure if the record demonstrates and the commission makes specific written findings that:

1. the structure is necessary and unavoidable to protect (a) infrastructure facilities, (b) cemetery or burial grounds, (c) water-dependent uses fundamental to habitability or such property's primary use, or (d) inhabited structures or structure additions constructed by January 1, 1995;
2. there is no feasible, less environmentally damaging alternative; and
3. all reasonable mitigation measures and techniques are implemented to minimize adverse environmental impacts.

By law, the CMA requires towns to review coastal site plans for activities at least partially in the coastal boundary and landward of the mean high water mark. A coastal site plan for a shoreline flood and erosion control structure must be filed with a municipal zoning commission to determine conformity with municipal zoning regulations and certain state statutory requirements. The law requires a shoreline flood and erosion control applicant to obtain any necessary DEEP permit for conducting a regulated activity in the state's tidal, coastal, or navigable waters waterward of the high tide line. (The bill substitutes the term "high tide line" with "coastal jurisdiction line" (see below)).

Alternatives, Mitigation Measures, and Techniques

Under the bill, if the DEEP commissioner or a municipal commission denies a shoreline flood and erosion control structure application because (1) there may be feasible, less environmentally damaging alternatives or (2) reasonable mitigation measures and techniques were not provided, they must propose, in writing and on the record, the types of alternatives or mitigation measures and techniques the applicant can investigate. The bill specifies that it does

not shift the applicant's burden of (1) proving the applicant is entitled to approval or (2) presenting alternatives.

The bill specifies that "feasible, less environmentally damaging alternative" includes such things as (1) relocating an inhabited structure to a landward location; (2) elevating an inhabited structure; (3) restoring or creating a dune or vegetated slope; or (4) living shoreline techniques that use a variety of structural and organic materials to protect the shoreline and maintain or restore coastal resources and habitat, like tidal wetland plants, submerged aquatic vegetation, coir (coconut) fiber logs, sand fill, and stone.

"Reasonable mitigation measures and techniques" include such things as (1) provisions for upland migration of on-site tidal wetlands, (2) littoral system and public beach replenishment with suitable sediment at a rate and frequency equal to the sediment removed from the site because of the proposed structure, or (3) removing on- or off-site existing shoreline flood and erosion control structures from public or private shoreline property to at least the same extent as the shoreline area impacted by the proposed structure.

§§ 4-8 — REGULATED ACTIVITY IN TIDAL, COASTAL, OR NAVIGABLE WATERS

Coastal Jurisdiction Line

The bill removes the statutory definition and references to "high tide line," replacing it with "coastal jurisdiction line." It defines "coastal jurisdiction line" as the location of the topographical elevation of the highest predicted tide from 1983 to 2001, based on the most recent National Tidal Datum Epoch published by the National Oceanic and Atmospheric Administration and described in terms of feet of elevation of above the North American Vertical Datum of 1988.

The bill specifies that for any of the state's tidal, coastal, or navigable waters located upstream of a tide gate, weir, or other device that modifies tidal water flow, the coastal jurisdiction line is the elevation of mean high water found at the device's downstream location.

Navigable Waters

The bill defines “navigable waters” for purposes of regulating certain coastal activities, as (1) Long Island Sound or any of its coves, bays, or inlets and (2) that portion of any tributary, river, or stream that empties into Long Island Sound upstream to the first permanent obstruction to navigation for watercraft from Long Island Sound.

§ 9 — STATE PLAN OF CONSERVATION AND DEVELOPMENT

By law, OPM must prepare the state Plan of Conservation and Development for legislative approval every five years. Starting October 1, 2012, the bill requires any plan revision to (1) consider risks associated with increased coastal erosion caused by a rise in sea level, based on site topography; (2) identify impacts of such increased erosion on infrastructure and natural resources; and (3) make recommendations for siting future infrastructure and property development to minimize using areas prone to such erosion.

§ 10 — SHORELINE PROGRAMS AND STUDIES

Pilot Program

The bill authorizes the DEEP commissioner, within available appropriations, to establish a pilot program to encourage innovative and low-impact approaches to (1) shoreline protection and (2) adaptation to sea level rise. These approaches may include living shoreline techniques to protect the shoreline and maintain or restore coastal resources and habitat with various structural and organic materials, including (1) tidal wetland plants, (2) submerged aquatic vegetation, (3) coir fiber logs, (4) sand fill, and (5) stone.

The bill allows the DEEP commissioner to (1) solicit proposals for site-specific pilot projects that use these approaches and (2) offer technical assistance for the projects. If a proposed project involves tidal wetlands or tidal, coastal, or navigable waters waterward of the coastal jurisdiction line, the DEEP commissioner can only select up to three such projects each year to receive expedited regulatory approval for certain maintenance activities. By law, such activities include (1) substantial maintenance or repair of existing structures, fill,

obstructions, or encroachments; (2) certain maintenance dredging; (3) removal of derelict structures or vessels; (4) temporary structure placement for water-dependent uses; and (5) open water marsh management, tidal wetland, restoration, resource restoration or enhancement activity, and certain conservation activities, among other things (CGS § 22a-363b).

Shoreline Management Study

The bill also authorizes the DEEP commissioner, within available appropriations and in conjunction with academic institutions, nongovernmental organizations, or federal agencies, to seek funds for and prepare a shoreline management study. The study's purpose is to enhance coastal community resilience to coastal hazards and sea level rise, particularly areas significantly impacted by coastal storms.

Science and Engineering Capacity Program

The bill authorizes the University of Connecticut and the Connecticut State University System to work with other academic institutions and federal and state agencies to seek funds for and establish a program to develop and maintain state science and engineering capacity to support shoreline planning and management to enhance coastal community resilience to coastal hazards and sea level rise. They must do so within available appropriations.

BACKGROUND

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 (File 341), reported favorably by the Environment Committee, makes several changes to the CMA, including requiring the consideration of sea level rise in coastal site plan reviews and preventing certain reconstruction after a casualty loss.

SB 351 (File 277, as amended by Senate "A"), among other things, 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)

Planning and Development Committee

Joint Favorable

Yea 16 Nay 3 (04/16/2012)