

OFFICE OF LEGISLATIVE RESEARCH
PUBLIC ACT SUMMARY



PA 12-101—SB 376

Environment Committee

Planning and Development Committee

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

SUMMARY: This act 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 (a) cemetery and burial grounds and (b) 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 act 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.

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

§ 2 — DEFINITION OF RISE IN SEA LEVEL

The act defines a "rise in sea level" under the CMA as the average of the most recent equivalent per-decade rise in the state's tidal and coastal waters surface level, as documented for annual, decadal, or centenary periods at any state site specified in National Oceanic and Atmospheric Administration (NOAA) online or printed publications.

§ 1 — COASTAL MANAGEMENT ACT GOALS AND POLICIES

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By law, the CMA sets general goals and policies to balance development and protection of the state's coastal resources. The act adds to these goals and policies consideration of private property owners' rights when developing, preserving, or using coastal resources. It also adds consideration of the potential impact of a rise in sea level, in addition to coastal flooding and erosion patterns as required under existing law, when planning coastal development. Such planning consideration must minimize shoreline armoring to protect future new development. Existing law already requires it to (1) minimize damage to and destruction of life and property and (2) reduce public expense to protect future development.

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

The act specifies that, for the purposes of CMA's goals and policies, "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.

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

Definition

The act specifically excludes from the definition of "shoreline flood and erosion control structure" any activity that has the primary purpose or effect of restoring or enhancing tidal wetlands, beaches, dunes, or intertidal flats, 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 act, already excludes certain additions, reconstructions, changes, or adjustments to a walled and roofed building.

Coastal Site Plan Approval

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By law, the CMA requires coastal site plan reviews for certain 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. A shoreline flood and erosion control structure applicant must obtain any necessary DEEP approval for conducting a regulated activity in the state's tidal, coastal, or navigable waters waterward of the coastal jurisdiction line (previously the high tide line).

The act 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 the property's primary use, or (d) inhabited structures or 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.

Alternatives, Mitigation Measures, and Techniques

Under the act, 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 efforts the applicant can investigate. The act specifies that this requirement does not shift the applicant's burden to (1) prove entitlement to approval or (2) present alternatives.

"Reasonable mitigation measures and techniques" include such things as (1) provisions for upland migration of on-site tidal wetlands, (2) littoral (associated with tidal water shore land) 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) on- or off-site removal of 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 act removes the statutory definition of 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 NOAA and described in terms of feet of elevation above the North American

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Vertical Datum of 1988.

The act specifies that, for any of the state's tidal, coastal, or navigable waters 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.

By law, DEEP regulates dredging, erecting structures, placing fill, and related work in state tidal, coastal, or navigable waters waterward of the coastal jurisdiction line.

Navigable Waters

The act 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) the part of any tributary, river, or stream that empties into Long Island Sound upstream to the first permanent obstruction to watercraft navigation 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 act 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 STUDY

Pilot Program

The act 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) sea level rise adaptation. 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 such as (1) tidal wetland plants, (2) submerged aquatic vegetation, (3) coir fiber logs, (4) sand fill, and (5) stone.

It allows the DEEP commissioner to (1) solicit proposals for site-specific pilot projects using the above 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 permission to conduct 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; and (4) temporary structure placement for water-

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dependent uses, among other things (CGS § 22a-363b).

Science and Engineering Capacity Program

The act also 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 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 can do so within available appropriations.

Shoreline Management Study

The act 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 in areas significantly impacted by coastal storms.

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 Act

PA 12-100 also adds cemetery and burial grounds to the list of land uses that can be protected by structural solutions in the coastal boundary.

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