



# Senate

General Assembly

**File No. 412**

*January Session, 2013*

Substitute Senate Bill No. 459

*Senate, April 9, 2013*

The Committee on Planning and Development reported through SEN. CASSANO, S. of the 4th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

## ***AN ACT CONCERNING LOCAL CONTROL OVER COASTAL AREAS.***

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

1 Section 1. Subsection (b) of section 22a-109 of the general statutes is  
2 repealed and the following is substituted in lieu thereof (*Effective*  
3 *October 1, 2013*):

4 (b) The zoning commission may by regulation exempt any or all of  
5 the following uses from the coastal site plan review requirements of  
6 this chapter: (1) Minor additions to or modifications of existing  
7 buildings or detached accessory buildings, such as garages and utility  
8 sheds; (2) construction of new or modification of existing structures  
9 incidental to the enjoyment and maintenance of residential property  
10 including but not limited to walks, terraces, driveways, swimming  
11 pools, tennis courts, docks and detached accessory buildings; (3)  
12 construction of new or modification of existing on-premise structures  
13 including fences, walls, pedestrian walks and terraces, underground  
14 utility connections, essential electric, gas, telephone, water and sewer

15 service lines, signs and such other minor structures as will not  
16 substantially alter the natural character of coastal resources or restrict  
17 access along the public beach; (4) construction of an individual single-  
18 family residential structure except when such structure is located on  
19 an island not connected to the mainland by an existing road bridge or  
20 causeway or except when such structure is in or within one hundred  
21 feet of the following coastal resource areas: Tidal wetlands, coastal  
22 bluffs and escarpments and beaches and dunes; (5) activities  
23 conducted for the specific purpose of conserving or preserving soil,  
24 vegetation, water, fish, shellfish, wildlife and other coastal land and  
25 water resources; (6) interior modifications to buildings; [and] (7) minor  
26 changes in use of a building, structure or property except those  
27 changes occurring on property adjacent to or abutting coastal waters;  
28 (8) construction of a deck up to ten feet landward of the coastal  
29 jurisdiction line and any structural components, other than a  
30 foundation, used to support a residence; and (9) construction of a  
31 seawall. Gardening, grazing and the harvesting of crops shall be  
32 exempt from the requirements of this chapter. Notwithstanding the  
33 provisions of this subsection, shoreline flood and erosion control  
34 structures as defined in subsection (c) of this section shall not be  
35 exempt from the requirements of this chapter.

36 Sec. 2. Subdivision (1) of subsection (a) of section 22a-361 of the  
37 general statutes is repealed and the following is substituted in lieu  
38 thereof (*Effective October 1, 2013*):

39 (a) (1) No person, firm or corporation, public, municipal or private,  
40 shall dredge, erect any structure, place any fill, obstruction or  
41 encroachment or carry out any work incidental thereto or retain or  
42 maintain any structure, dredging or fill, in the tidal, coastal or  
43 navigable waters of the state waterward of the coastal jurisdiction line  
44 until such person, firm or corporation has submitted an application  
45 and has secured from the Commissioner of Energy and Environmental  
46 Protection a certificate or permit for such work and has agreed to carry  
47 out any conditions necessary to the implementation of such certificate  
48 or permit, except the provisions of this section shall not apply to the

49 construction of a deck up to ten feet landward of the coastal  
50 jurisdiction line, any structural components, other than a foundation,  
51 used to support a residence or any seawall.

52 (A) Except as provided in subdivision (3) of this subsection, each  
53 application for a permit, except for an emergency authorization, for  
54 any structure, filling or dredging which uses or occupies less than five  
55 thousand five hundred square feet in water surface area based on the  
56 perimeters of the project shall be accompanied by a fee equal to eighty  
57 cents per square foot provided such fee shall not be less than six  
58 hundred sixty dollars.

59 (B) Except as provided in subdivision (3) of this subsection, each  
60 application for a permit for any structure, filling or dredging which  
61 uses or occupies five thousand five hundred square feet or more but  
62 less than five acres in water surface area based on the perimeters of the  
63 project shall be accompanied by a fee of three thousand five hundred  
64 fifty dollars plus ten cents per square foot for each square foot in  
65 excess of five thousand five hundred square feet.

66 (C) Except as provided in subdivision (3) of this subsection, each  
67 application for a permit for any structure, filling or dredging which  
68 uses or occupies five or more acres in water surface area based on the  
69 perimeters of the project shall be accompanied by a fee of nineteen  
70 thousand four hundred seventy-five dollars plus five hundred twenty-  
71 five dollars per acre for each acre or part thereof in excess of five acres.

72 (D) Except as provided in subdivision (3) of this subsection, each  
73 application for a mooring area or multiple mooring facility, regardless  
74 of the area to be occupied by moorings, shall be accompanied by a fee  
75 of six hundred sixty dollars provided that such mooring areas or  
76 facilities shall not include fixed or floating docks, slips or berths.

77 (E) Application fees for aquaculture activities shall not be based on  
78 areal extent.

79 Sec. 3. Subsection (e) of section 22a-361 of the general statutes is

80 repealed and the following is substituted in lieu thereof (*Effective*  
81 *October 1, 2013*):

82 (e) (1) No person, firm or corporation, public, municipal or private,  
83 who removes sand, gravel or other material lying waterward of the  
84 mean high water mark of the tidal, coastal or navigable waters of the  
85 state pursuant to a permit issued under this section on or after October  
86 1, 1996, shall make any beneficial or commercial use of such sand,  
87 gravel or other material except upon payment to the state of a fee of  
88 four dollars per cubic yard of such sand, gravel and other materials.  
89 Such payment shall be made at times and under conditions specified  
90 by the commissioner in such permit. No fee shall be assessed for [(1)]  
91 (A) the performance of such activities on land which is not owned by  
92 the state, [(2)] (B) the use of sand, gravel or other materials for beach  
93 restoration projects, or [(3)] (C) ultimate disposal of such sand, gravel  
94 or other materials which does not result in an economic benefit to any  
95 person. For the purposes of this [section] subdivision, "beneficial or  
96 commercial use" includes, but is not limited to, sale or use of sand,  
97 gravel or other materials for construction, aggregate, fill or  
98 landscaping.

99 (2) No person, firm or corporation, public, municipal or private,  
100 who removes sand, gravel or other material lying waterward of the  
101 mean high water mark of the tidal, coastal or navigable waters shall  
102 dispose of sand, gravel or other material in a manner that does not  
103 result in an economic benefit to any person before offering such sand,  
104 gravel or other material first to municipalities and then to any district  
105 established pursuant to chapter 105 to plan, lay out, acquire, construct,  
106 reconstruct, repair, maintain, supervise and manage a flood or erosion  
107 control system. Such sand, gravel or other material shall be offered for  
108 beach restoration and shall be available (A) to municipalities for the  
109 cost of transporting such sand, gravel or other material, and (B) to  
110 districts for a reasonable fee.

This act shall take effect as follows and shall amend the following sections:

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Section 1	<i>October 1, 2013</i>	22a-109(b)
Sec. 2	<i>October 1, 2013</i>	22a-361(a)(1)
Sec. 3	<i>October 1, 2013</i>	22a-361(e)

**PD**      *Joint Favorable Subst.*

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.

**OFA Fiscal Note**

**State Impact:**

Agency Affected	Fund-Effect	FY 14 \$	FY 15 \$
Department of Energy and Environmental Protection	GF - Revenue Loss	Approximately 50,000	Approximately 50,000

**Municipal Impact:**

Municipalities	Effect	FY 14 \$	FY 15 \$
Various Municipalities	Potential Cost	See Below	See Below

**Explanation**

The bill exempts various structures from permitting with the Department of Energy and Environmental Protection (DEEP). As various types of permits would no longer be required, there would be a revenue loss of approximately \$50,000 annually. In FY 12, DEEP issued 323 certificates of permission, permits for tidal wetlands structures, and other environmental quality permits, costing between \$375 and \$660 each, generating \$128,535 in revenue. It is anticipated that approximately half of these permits would be exempted under the bill.

The bill also requires people discarding certain materials taken from the shoreline to offer these materials to towns and tax districts under certain conditions. Municipalities receiving this material must pay for the cost of transportation and tax districts must pay a reasonable fee. To the extent municipalities and tax districts accept receipt of this material, there may be costs incurred for the transportation of, and payment for, this material.

***The Out Years***

The annualized ongoing fiscal impact identified above would continue into the future subject to the number of permits exempted and the actual cost of material a municipality or tax district chooses to receive.

**OLR Bill Analysis****sSB 459*****AN ACT CONCERNING LOCAL CONTROL OVER COASTAL AREAS.*****SUMMARY:**

This bill exempts from coastal site plan review, if authorized by a municipal zoning commission, and Department of Energy and Environmental Protection (DEEP) permitting, the construction of: (1) decks up to 10 feet landward of the coastal jurisdiction line; (2) structural components, other than foundations, that are used to support a residence; and (3) seawalls (see COMMENT).

By law, DEEP regulates dredging, erecting structures, placing fill, and related work in tidal wetlands and waterward of the coastal jurisdiction line. Presumably, DEEP does not have jurisdiction over deck construction landward of the coastal jurisdiction line.

The bill also requires anyone disposing of sand, gravel, or other material collected waterward of the mean high water mark in the state's tidal, coastal, or navigable waters to first offer the material to municipalities and certain special taxing districts for flood and erosion control systems. An offer is necessary only if the party that removed the material seeks to dispose of it in a way that will not result in an economic benefit to anyone. Municipalities receiving these materials must pay for the cost of transporting them and special districts must pay a reasonable fee.

EFFECTIVE DATE: October 1, 2013

**BACKGROUND*****Coastal Jurisdiction Line***

“Coastal jurisdiction line” is the location of the topographical elevation of the highest predicted tide from 1983 to 2001. 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.

### **Mean High Water Mark**

“Mean high water mark” is the line on the shore indicating the average shoreward extent of all high tides. The mark also denotes the seaward limit of private property ownership in Connecticut.

### **Local Regulation**

By law, the Coastal Management Act 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.

### **Coastal Boundary**

The “coastal boundary,” within the state’s coastal area, is the furthest inland of (1) the 100-year-frequency coastal flood zone, (2) a 1,000-foot linear setback from the mean high-water mark, or (3) a 1,000-foot linear setback from the inland boundary of the tidal wetlands.

### **DEEP Permitting**

DEEP has direct regulatory authority over construction or development activities in tidal wetlands or waterward of the coastal jurisdiction line. Anyone proposing to conduct certain activities such as excavation, dredging, or building certain structures in a tidal wetland or waterward of the coastal jurisdiction line must apply for a permit from DEEP.

### **COMMENT**

#### **Conflict with CGS § 22a-109(c)**

The bill permits a zoning commission to exempt the construction of seawalls from coastal site plan review. But, the bill retains the existing statutory provision that prohibits zoning commissions from exempting coastal flood and erosion control structures, as defined in CGS § 22a-109(c). That subsection defines the term “shoreline flood and erosion control structure” to include seawalls.

**COMMITTEE ACTION**

Planning and Development Committee

Joint Favorable Substitute

Yea 17      Nay 2      (03/22/2013)