



Senate

General Assembly

File No. 413

January Session, 2013

Substitute Senate Bill No. 460

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 COASTAL PROTECTION MEASURES,
ROUTINE MAINTENANCE AND REPAIR OF SHORELINE
STRUCTURES, STATE-WIDE POLICY CONCERNING WATER
RESOURCES AND PROCEDURES OF THE DEPARTMENT OF
ENERGY AND ENVIRONMENTAL PROTECTION.**

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

1 Section 1. Section 22a-363a of the general statutes is repealed and
2 the following is substituted in lieu thereof (*Effective October 1, 2013*):

3 For the purposes of this section and sections 22a-361, 22a-361a, 22a-
4 362, 22a-363b, as amended by this act, and 22a-363d to 22a-363f,
5 inclusive: "Substantial maintenance" means rebuilding, reconstructing,
6 or reestablishing to a preexisting condition and dimension any
7 structure, fill, obstruction or encroachment; "routine maintenance"
8 means replacement and repair of out-of-water structures including the
9 surfaces of docks, piers, wharves and bridges, replacement or repair in
10 any year of up to [twenty-five] fifty per cent of all pilings approved in
11 accordance with section 22a-361 and seasonal installation,

12 reinstallation or repair of floating docks, provided that all locations,
13 dimensions, elevations and materials shall remain the same as or
14 equivalent to that approved in accordance with said section;
15 "perimeter permit" means a permit issued in accordance with said
16 section, establishing boundaries waterward of the coastal jurisdiction
17 line within which recreational marinas layout of in-water slips, docks
18 and moorings may be reconfigured; "work" means any activity,
19 construction, or site preparation, erection of structures or placement of
20 fill, including but not limited to grading, excavating, dredging or
21 disposing of dredged material, depositing of soil, stones, sand, gravel,
22 mud, aggregate or construction materials, filling, removing vegetation
23 or other material, or other modification of a site within the tidal,
24 coastal or navigable waters of the state waterward of the coastal
25 jurisdiction line.

26 Sec. 2. Section 22a-363b of the general statutes is repealed and the
27 following is substituted in lieu thereof (*Effective October 1, 2013*):

28 (a) Routine maintenance of permitted structures, fill, obstructions or
29 encroachments or routine maintenance of structures, fill, obstructions
30 or encroachments in place prior to ~~[June 24, 1939]~~ January 1, 1995, and
31 continuously maintained and serviceable since that date shall be
32 exempt from the requirements of obtaining certificates of permission
33 or permits pursuant to section 22a-363a, as amended by this act, this
34 section or section 22a-361, provided such structures, fill, obstructions
35 or encroachments have not been the subject of a violation issued by a
36 municipality or the Department of Energy and Environmental
37 Protection prior to October 1, 2013. The following activities may be
38 eligible for a certificate of permission, in accordance with the
39 provisions of subsections (c) and (d) of this section: (1) Substantial
40 maintenance or repair of existing structures, fill, obstructions or
41 encroachments authorized pursuant to section 22a-33 or 22a-361; (2)
42 substantial maintenance of any structures, fill, obstructions or
43 encroachments in place prior to ~~[June 24, 1939]~~ January 1, 1995, and
44 continuously maintained and serviceable since such time; (3)
45 maintenance dredging of areas which have been dredged and

46 continuously maintained and serviceable as authorized pursuant to
47 section 22a-33 or 22a-361; (4) activities allowed pursuant to a perimeter
48 permit and requiring authorization by the commissioner; (5) the
49 removal of derelict structures or vessels; (6) minor alterations or
50 amendments to permitted activities consistent with the original permit;
51 (7) minor alterations or amendments to activities completed prior to
52 [June 24, 1939] January 1, 1995; (8) placement of temporary structures
53 for water-dependent uses, as defined in section 22a-93; (9) open water
54 marsh management, tidal wetland restoration, resource restoration or
55 enhancement activity, as defined in subsection (a) of section 22a-361,
56 and conservation activities undertaken by or under the supervision of
57 the Department of Energy and Environmental Protection; (10) the
58 placement or reconfiguration of piers, floats, docks or moorings within
59 existing waterward boundaries of recreational marinas or yacht clubs
60 which have been authorized pursuant to section 22a-33 or 22a-361; and
61 (11) substantial maintenance or repair of structures, fill, obstructions or
62 encroachments placed landward of the mean high waterline and
63 waterward of the coastal jurisdiction line completed prior to [October
64 1, 1987] January 1, 1995, and continuously maintained and serviceable
65 since said date. Notwithstanding the provisions of sections 22a-29 to
66 22a-35, inclusive, the commissioner may issue a certificate of
67 permission for activities enumerated in this subsection which are to be
68 conducted in tidal wetlands. Upon issuance, such certificate shall be in
69 lieu of the permit required pursuant to section 22a-32.

70 (b) The commissioner [may] shall issue a certificate of permission
71 for activities [which] that were completed prior to January 1, 1995, for
72 which permits, certificates or emergency authorizations were required
73 pursuant to section 22a-32, this section, section 22a-361 or section 22a-
74 363d, which were conducted without such permit, certificate or
75 emergency authorization, [provided the applicant demonstrates that
76 such activity complies with all applicable standards and criteria. In
77 determining the eligibility of activities conducted without prior
78 authorization, the commissioner may consider whether the applicant
79 acquired such real estate interest in the work site after the date of
80 conduct of the unauthorized activity, is not otherwise liable for the

81 unauthorized activity as a result of actions taken prior to the
82 acquisition and did not know and had no reason to know of the
83 unauthorized activity] provided such activities were not the subject of
84 a violation issued by a municipality or the Department of Energy and
85 Environmental Protection prior to October 1, 2012. The commissioner
86 [may] shall authorize the maintenance of or minor alterations to
87 unauthorized activities consistent with this subsection, including the
88 use of alternative deck surfacing materials and the use of standard and
89 accepted materials to repair or replace existing seawalls. Unauthorized
90 activities which are ineligible for certificates of permission may be
91 subject to applicable enforcement actions by the commissioner.

92 (c) A request for a certificate of permission shall be made to the
93 Commissioner of Energy and Environmental Protection. If a proposed
94 activity is within a category listed in subsection (a) or (b) of this
95 section, the commissioner [may] shall, in whole or in part, approve,
96 modify and approve or deny a certificate. The commissioner shall issue
97 such a certificate if the eligible proposed activity is consistent with a
98 permit issued pursuant to section 22a-33 or 22a-361 or was in place
99 prior to [June 24, 1939] January 1, 1995, and continuously maintained
100 and serviceable since such time. If the eligible proposed activity does
101 not have a permit or has not received any prior permits, the
102 commissioner shall determine if the information provided is sufficient
103 to determine if the proposed activity complies with the applicable
104 standards and criteria and may (1) issue a certificate of permission if
105 the commissioner finds that the information indicates compliance with
106 all applicable standards and criteria, or (2) require the submittal of a
107 complete application for a permit pursuant to section 22a-32 or 22a-
108 361, if the commissioner finds that the information is not sufficient to
109 indicate compliance with the standards and criteria. [If the
110 commissioner finds that changes in conditions or circumstances
111 associated with a permitted structure, fill, obstruction or encroachment
112 are likely to result in significant impacts to the environment or coastal
113 resources, the commissioner may require an application for a permit
114 pursuant to section 22a-32 or 22a-361.] If the commissioner finds that
115 the structure, fill, obstruction or encroachment is not in substantial

116 compliance with the permit or authorization under which a certificate
117 of permission is requested, and is not consistent with applicable
118 standards and criteria, the commissioner shall not issue a certificate of
119 permission. For the purposes of this section, standards and criteria are
120 those specified in sections 22a-33 and 22a-359 and regulations adopted
121 pursuant to section 22a-30, in any regulations adopted pursuant to
122 subsection (c) of said section 22a-361, in the water quality standards of
123 the Department of Energy and Environmental Protection, and in
124 sections 22a-92, as amended by this act, and 22a-98 for activities within
125 the coastal boundary, as defined in section 22a-93.

126 (d) The commissioner shall, within [forty-five] thirty days of receipt
127 of a request for a certificate of permission, issue such certificate or
128 notify the person making such request that (1) additional information
129 or an application for a permit pursuant to section 22a-32 or 22a-361 is
130 required, or (2) the structure, fill, obstruction or encroachment is not
131 eligible for a certificate of permission. If the commissioner requests
132 additional information from an applicant, the commissioner shall
133 make a determination on the application no later than ninety days
134 from the date of receipt of the request for a certificate of permission. If
135 the commissioner fails to respond within [forty-five] thirty days of
136 receipt of a request, the certificate of permission shall be deemed
137 approved, except that no certificate of permission for dredging [,] or
138 activities located within tidal wetlands, as defined in section 22a-29 [,]
139 or activities conducted without prior authorization] shall be deemed
140 approved by virtue of the commissioner's failure to respond.

141 (e) Notwithstanding the provisions of the general statutes, the
142 commissioner shall not issue a certificate of permission for a pound
143 net, weir or similar fish harvesting structure that was not utilized prior
144 to June 6, 2001. The commissioner may issue a permit for such fish
145 harvesting structure, in accordance with section 22a-361, provided, if
146 the commissioner receives a petition signed by twenty-five or more
147 persons during the public comment period provided in subsection (b)
148 of section 22a-361 for the application for any such permit, the
149 commissioner shall hold a public hearing on such permit application.

150 (f) The commissioner shall consider an easement in perpetuity to be
151 the same as an interest in fee simple for purposes of evaluating any
152 application filed pursuant to this section.

153 Sec. 3. (NEW) (*Effective October 1, 2013*) In the event of an issuance of
154 a hurricane warning by the National Hurricane Center of the National
155 Weather Service in any part of the state, any property owner or
156 municipality may, in the twenty-four hours prior to the predicted
157 commencement of the hurricane, fortify property above the coastal
158 jurisdiction line with temporary structures, including sand bags,
159 blocks and other suitable materials. Any such structures must be
160 removed not later than forty-eight hours after a hurricane warning is
161 lifted.

162 Sec. 4. Subsection (b) of section 22a-92 of the general statutes is
163 repealed and the following is substituted in lieu thereof (*Effective*
164 *October 1, 2013*):

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

168 (1) Policies concerning development, facilities and uses within the
169 coastal boundary are: (A) To manage uses in the coastal boundary
170 through existing municipal planning, zoning and other local
171 regulatory authorities and through existing state structures, dredging,
172 wetlands, and other state siting and regulatory authorities, giving
173 highest priority and preference to water-dependent uses and facilities
174 in shorefront areas; (B) to locate and phase sewer and water lines so as
175 to encourage concentrated development in areas which are suitable for
176 development; and to disapprove extension of sewer and water services
177 into developed and undeveloped beaches, barrier beaches and tidal
178 wetlands except that, when necessary to abate existing sources of
179 pollution, sewers that will accommodate existing uses with limited
180 excess capacity may be used; (C) to promote, through existing state
181 and local planning, development, promotional and regulatory
182 authorities, the development, reuse or redevelopment of existing

183 urban and commercial fishing ports giving highest priority and
184 preference to water dependent uses, including but not limited to
185 commercial and recreational fishing and boating uses; to disallow uses
186 which unreasonably congest navigation channels, or unreasonably
187 preclude boating support facilities elsewhere in a port or harbor; and
188 to minimize the risk of oil and chemical spills at port facilities; (D) to
189 require that structures in tidal wetlands and coastal waters be
190 designed, constructed and maintained to minimize adverse impacts on
191 coastal resources, circulation and sedimentation patterns, water
192 quality, and flooding and erosion, to reduce to the maximum extent
193 practicable the use of fill, and to reduce conflicts with the riparian
194 rights of adjacent landowners; (E) to disallow the siting within the
195 coastal boundary of new tank farms and other new fuel and chemical
196 storage facilities which can reasonably be located inland and to require
197 any new storage tanks which must be located within the coastal
198 boundary to abut existing storage tanks or to be located in urban
199 industrial areas and to be adequately protected against floods and
200 spills; (F) to make use of rehabilitation, upgrading and improvement of
201 existing transportation facilities as the primary means of meeting
202 transportation needs in the coastal area; (G) to encourage increased
203 recreational boating use of coastal waters, where feasible, by (i)
204 providing additional berthing space in existing harbors, (ii) limiting
205 non-water-dependent land uses that preclude boating support
206 facilities, (iii) increasing state-owned launching facilities, and (iv)
207 providing for new boating facilities in natural harbors, new protected
208 water areas and in areas dredged from dry land; (H) to protect coastal
209 resources by requiring, where feasible, that such boating uses and
210 facilities (i) minimize disruption or degradation of natural coastal
211 resources, (ii) utilize existing altered, developed or redevelopment
212 areas, (iii) are located to assure optimal distribution of state-owned
213 facilities to the state-wide boating public, and (iv) utilize ramps and
214 dry storage rather than slips in environmentally sensitive areas; (I) to
215 protect and where feasible, upgrade facilities serving the commercial
216 fishing and recreational boating industries; to maintain existing
217 authorized commercial fishing and recreational boating harbor space

218 unless the demand for these facilities no longer exists or adequate
219 space has been provided; to design and locate, where feasible,
220 proposed recreational boating facilities in a manner which does not
221 interfere with the needs of the commercial fishing industry; [and] (J) to
222 require reasonable mitigation measures where development would
223 adversely impact historical, archaeological, or paleontological
224 resources that have been designated by the state historic preservation
225 officer; and (K) to encourage the cooperative use of confined aquatic
226 disposal cells.

227 (2) Policies concerning coastal land and water resources within the
228 coastal boundary are: (A) To manage coastal bluffs and escarpments so
229 as to preserve their slope and toe; to discourage uses which do not
230 permit continued natural rates of erosion and to disapprove uses that
231 accelerate slope erosion and alter essential patterns and supply of
232 sediments to the littoral transport system; (B) to manage rocky
233 shorefronts so as to ensure that development proceeds in a manner
234 which does not irreparably reduce the capability of the system to
235 support a healthy intertidal biological community; to provide feeding
236 grounds and refuge for shorebirds and finfish, and to dissipate and
237 absorb storm and wave energies; (C) to preserve the dynamic form and
238 integrity of natural beach systems in order to provide critical wildlife
239 habitats, a reservoir for sand supply, a buffer for coastal flooding and
240 erosion, and valuable recreational opportunities; to ensure that coastal
241 uses are compatible with the capabilities of the system and do not
242 unreasonably interfere with natural processes of erosion and
243 sedimentation, and to encourage the restoration and enhancement of
244 disturbed or modified beach systems; (D) to manage intertidal flats so
245 as to preserve their value as a nutrient source and reservoir, a healthy
246 shellfish habitat and a valuable feeding area for invertebrates, fish and
247 shorebirds; to encourage the restoration and enhancement of degraded
248 intertidal flats; to allow coastal uses that minimize change in the
249 natural current flows, depth, slope, sedimentation, and nutrient
250 storage functions and to disallow uses that substantially accelerate
251 erosion or lead to significant despoliation of tidal flats; (E) to preserve
252 tidal wetlands and to prevent the despoliation and destruction thereof

253 in order to maintain their vital natural functions; to encourage the
254 rehabilitation and restoration of degraded tidal wetlands and where
255 feasible and environmentally acceptable, to encourage the creation of
256 wetlands for the purposes of shellfish and finfish management, habitat
257 creation and dredge spoil disposal; (F) to manage coastal hazard areas
258 so as to ensure that development proceeds in such a manner that
259 hazards to life and property are minimized and to promote
260 nonstructural solutions to flood and erosion problems except in those
261 instances where structural alternatives prove unavoidable and
262 necessary to protect [inhabited structures constructed] any property
263 developed as of January 1, 1995, infrastructural facilities or water
264 dependent uses; (G) to promote, through existing state and local
265 planning, development, promotional and regulatory programs, the use
266 of existing developed shorefront areas for marine-related uses,
267 including but not limited to, commercial and recreational fishing,
268 boating and other water-dependent commercial, industrial and
269 recreational uses; (H) to manage undeveloped islands in order to
270 promote their use as critical habitats for those bird, plant and animal
271 species which are indigenous to such islands or which are increasingly
272 rare on the mainland; to maintain the value of undeveloped islands as
273 a major source of recreational open space; and to disallow uses which
274 will have significant adverse impacts on islands or their resource
275 components; (I) to regulate shoreland use and development in a
276 manner which minimizes adverse impacts upon adjacent coastal
277 systems and resources; and (J) to maintain the natural relationship
278 between eroding and depositional coastal landforms and to minimize
279 the adverse impacts of erosion and sedimentation on coastal land uses
280 through the promotion of nonstructural mitigation measures.
281 Structural solutions are permissible when necessary and unavoidable
282 for the protection of infrastructural facilities, cemetery or burial
283 grounds, water-dependent uses, or [inhabited structures constructed]
284 properties developed as of January 1, 1995, cemetery or burial
285 grounds, and where there is no feasible, less environmentally
286 damaging alternative and where all reasonable mitigation measures
287 and techniques have been provided to minimize adverse

288 environmental impacts.

289 Sec. 5. (NEW) (*Effective October 1, 2013*) For any order or decision of
290 the Commissioner of Energy and Environmental Protection for which
291 a hearing is not provided under the general statutes, any person who
292 or municipality which is aggrieved by such order or decision may,
293 within thirty days from the date such order or decision is sent, request
294 a hearing before the commissioner pursuant to this section. The
295 commissioner shall not grant any request for a hearing at any time
296 thereafter. After such hearing, the commissioner shall consider the
297 facts presented to him or her by the person or municipality, including
298 any additional evidence, the rebuttal or other evidence, and shall then
299 revise and resubmit the order or decision to the person or municipality
300 or inform the person or municipality that the previous order or
301 decision has been affirmed and remains in effect.

302 Sec. 6. Subsection (a) of section 22a-6b of the general statutes is
303 repealed and the following is substituted in lieu thereof (*Effective*
304 *October 1, 2013*):

305 (a) The Commissioner of Energy and Environmental Protection
306 shall adopt regulations, in accordance with the provisions of chapter
307 54, to establish a schedule setting forth the amounts, or the ranges of
308 amounts, or a method for calculating the amount of the civil penalties
309 which may become due under this section. Such schedule or method
310 may be amended from time to time in the same manner as for
311 adoption provided any such regulations which become effective after
312 July 1, 1993, shall only apply to violations which occur after said date.
313 The civil penalties established for each violation shall be of such
314 amount as to insure immediate and continued compliance with
315 applicable laws, regulations, orders and permits, provided no such
316 civil penalties shall be assessed until the date on which such civil
317 penalties become due and payable pursuant to subdivisions (1) to (3),
318 inclusive, of subsection (e) of this section. Such civil penalties shall not
319 exceed the following amounts:

320 (1) For failure to file any registration, other than a registration for a

321 general permit, for failure to file any plan, report or record, or any
322 application for a permit, for failure to obtain any certification, for
323 failure to display any registration, permit or order, or file any other
324 information required pursuant to any provision of section 14-100b or
325 14-164c, subdivision (3) of subsection (b) of section 15-121, section 15-
326 171, 15-172, 15-175, 22a-5, 22a-6, 22a-7, 22a-32, 22a-39 or 22a-42a, 22a-
327 45a, chapter 441, sections 22a-134 to 22a-134d, inclusive, subsection (b)
328 of section 22a-134p, section 22a-171, 22a-174, 22a-175, 22a-177, 22a-178,
329 22a-181, 22a-183, 22a-184, 22a-208, 22a-208a, 22a-209, 22a-213, 22a-220,
330 22a-231, 22a-245a, 22a-336, 22a-342, 22a-345, 22a-346, 22a-347, 22a-349a,
331 22a-354p, 22a-358, 22a-359, 22a-361, 22a-362, 22a-368, 22a-401 to 22a-
332 405, inclusive, 22a-411, 22a-416, 22a-417, 22a-424 to 22a-433, inclusive,
333 22a-447, 22a-449, 22a-450, 22a-451, 22a-454, 22a-458, 22a-461, 22a-462 or
334 22a-471, or any regulation, order or permit adopted or issued
335 thereunder by the commissioner, and for other violations of similar
336 character as set forth in such schedule or schedules, no more than one
337 thousand dollars for said violation and in addition no more than one
338 hundred dollars for each day during which such violation continues;

339 (2) For deposit, placement, removal, disposal, discharge or emission
340 of any material or substance or electromagnetic radiation or the
341 causing of, engaging in or maintaining of any condition or activity in
342 violation of any provision of section 14-100b or 14-164c, subdivision (3)
343 of subsection (b) of section 15-121, section 15-171, 15-172, 15-175, 22a-5,
344 22a-6, 22a-7, 22a-32, 22a-39 or 22a-42a, 22a-45a, chapter 441, sections
345 22a-134 to 22a-134d, inclusive, section 22a-69 or 22a-74, subsection (b)
346 of section 22a-134p, section 22a-162, 22a-171, 22a-174, 22a-175, 22a-177,
347 22a-178, 22a-181, 22a-183, 22a-184, 22a-190, 22a-208, 22a-208a, 22a-209,
348 22a-213, 22a-220, 22a-336, 22a-342, 22a-345, 22a-346, 22a-347, 22a-349a,
349 22a-354p, 22a-358, 22a-359, 22a-361, 22a-362, 22a-368, 22a-401 to 22a-
350 405, inclusive, 22a-411, 22a-416, 22a-417, 22a-424 to 22a-433, inclusive,
351 22a-447, 22a-449, 22a-450, 22a-451, 22a-454, 22a-458, 22a-461, 22a-462 or
352 22a-471, or any regulation, order or permit adopted thereunder by the
353 commissioner, and for other violations of similar character as set forth
354 in such schedule or schedules, no more than twenty-five thousand
355 dollars for said violation for each day during which such violation

356 continues;

357 (3) For violation of the terms of any final order of the commissioner,
358 except final orders under subsection (d) of this section and emergency
359 orders and cease and desist orders as set forth in subdivision (4) of this
360 subsection, for violation of the terms of any permit issued by the
361 commissioner, and for other violations of similar character as set forth
362 in such schedule or schedules, no more than twenty-five thousand
363 dollars for said violation for each day during which such violation
364 continues;

365 (4) For violation of any emergency order or cease and desist order of
366 the commissioner, and for other violations of similar character as set
367 forth in such schedule or schedules, no more than twenty-five
368 thousand dollars for said violation for each day during which such
369 violation continues;

370 (5) For failure to make an immediate report required pursuant to
371 subdivision (3) of subsection (a) of section 22a-135, or a report required
372 by the department pursuant to subsection (b) of section 22a-135, no
373 more than twenty-five thousand dollars per violation per day;

374 (6) For violation of any provision of the state's hazardous waste
375 program, no more than twenty-five thousand dollars per violation per
376 day;

377 (7) For wilful violation of any condition imposed pursuant to
378 section 26-313 which leads to the destruction of, or harm to, any rare,
379 threatened or endangered species, no more than ten thousand dollars
380 per violation per day;

381 (8) For violation of any provision of sections 22a-608 to 22a-611,
382 inclusive, no more than the amount established by Section 325 of the
383 Emergency Planning and Community Right-To-Know Act of 1986 (42
384 USC 11001 et seq.) for a violation of Section 302, 304 or 311 to 313,
385 inclusive, of said act.

386 Sec. 7. Section 22a-5c of the general statutes is repealed and the

387 following is substituted in lieu thereof (*Effective October 1, 2013*):

388 (a) When an order issued by the Commissioner of Energy and
 389 Environmental Protection to any person pursuant to section 22a-6, 22a-
 390 6b, as amended by this act, 22a-7, 22a-108 or 22a-363f to correct, abate
 391 or penalize any violation of section 22a-32, 22a-92, as amended by this
 392 act, or 22a-361 or any certificate or permit issued under section 22a-6,
 393 22a-6b, as amended by this act, 22a-7, 22a-32, 22a-92, as amended by
 394 this act, 22a-108, 22a-361 or 22a-363f becomes final, the commissioner
 395 shall cause a certified copy or notice of the final order to be filed on the
 396 land records in the town in which the land is located. Such certified
 397 copy or notice shall constitute a notice to the owner's heirs, successors
 398 and assigns. When the order is complied with or revoked, the
 399 commissioner shall issue a certificate showing such compliance or
 400 revocation, which certificate the commissioner shall cause to be
 401 recorded on the land records in the town in which the order was
 402 previously recorded. A certified copy of the certificate showing such
 403 compliance or revocation shall be sent to the owner at the owner's last-
 404 known post office address.

405 (b) No order issued by the Commissioner of Energy and
 406 Environmental Protection shall continue in force for a longer period
 407 than fifteen years after the order has been issued unless the
 408 commissioner causes to be filed on the land records a notice that such
 409 order has not been complied with. Each such order, after the expiration
 410 of the fifteen-year period, shall be invalid and discharged as a matter
 411 of law. With respect to any notice that an order has not been complied
 412 with, such notice shall continue the validity of the order for a period of
 413 three years from the date on which such notice was recorded, after
 414 which time such order shall be invalid and discharged as a matter of
 415 law.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2013	22a-363a
Sec. 2	October 1, 2013	22a-363b

Sec. 3	<i>October 1, 2013</i>	New section
Sec. 4	<i>October 1, 2013</i>	22a-92(b)
Sec. 5	<i>October 1, 2013</i>	New section
Sec. 6	<i>October 1, 2013</i>	22a-6b(a)
Sec. 7	<i>October 1, 2013</i>	22a-5c

Statement of Legislative Commissioners:

In section 5, after "the Commissioner of", "the Department of" was deleted for accuracy.

PD *Joint Favorable Subst. -LCO*

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 7,500	Approximately 7,500

Municipal Impact: None

Explanation

The bill exempts various coastal activities from permitting with the Department of Energy and Environmental Protection (DEEP). As the bill reduces the types of environmental quality permits that would be required, there would be a revenue loss of approximately \$7,500 annually. In FY 12, DEEP issued 297 certificates of permission at a cost of \$375 each generating \$111,375 in revenue. It is anticipated that approximately 20 certificates would be exempted under the bill.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to the number of permits exempted.

OLR Bill Analysis**sSB 460*****AN ACT CONCERNING COASTAL PROTECTION MEASURES, ROUTINE MAINTENANCE AND REPAIR OF SHORELINE STRUCTURES, STATE-WIDE POLICY CONCERNING WATER RESOURCES AND PROCEDURES OF THE DEPARTMENT OF ENERGY AND ENVIRONMENTAL PROTECTION.*****SUMMARY:**

This bill expands the circumstances under which a property owner may maintain unauthorized coastal structures, fill, obstructions, and encroachments (“structures”) built before January 1, 1995 by grandfathering these structures into existing permitting exemptions. In addition, the bill reduces the number of activities subject to Department of Energy and Environmental Protection (DEEP) permitting and limits the commissioner’s discretion to deny certificates of permission (COP).

The bill also:

1. authorizes property owners and municipalities to temporarily fortify shoreline property in the event of a hurricane warning;
2. allows a person or municipality aggrieved by a DEEP decision to request a hearing and sets the timeline for civil penalty assessment;
3. makes an order issued by DEEP invalid and discharged after 15 to 18 years; and
4. makes technical and conforming changes.

EFFECTIVE DATE: October 1, 2013

UNAUTHORIZED STRUCTURES

By law, a DEEP individual or general permit is required for certain activities involving coastal structures, such as seawall construction or repair. However, minor activities related to previously authorized work may be eligible for a COP, which is easier to obtain than a permit. Activities eligible for a COP include maintenance dredging and substantial maintenance of existing structures. In some cases, maintenance of unauthorized structures that were completed prior to specific dates may also be eligible for a COP.

The bill eliminates the need for a COP for:

1. substantial maintenance of structures put in place between June 24, 1939 and January 1, 1995, so long as they were continuously maintained and serviceable;
2. minor alterations and amendments of structures put in place between June 24, 1939 and January 1, 1995; and
3. repair of structures put in place between October 1, 1987 and January 1, 1995 that are landward of the mean high waterline and waterward of the coastal jurisdiction line and were continuously maintained and serviceable.

Under current law, routine maintenance of certain structures can be done without a COP or a permit. The bill additionally permits routine maintenance of unauthorized structures put in place between June 24, 1939 and January 1, 1995 if they were continuously maintained and serviceable. On the other hand, it requires a COP for routine maintenance of an unauthorized structure put in place before January 1, 1995 if it was subject to a municipal or DEEP enforcement action before October 1, 2013. It also expands, from 25% to 50%, the proportion of pilings that can be repaired or replaced and still considered routine maintenance, so long as their footprint is unchanged.

COP APPROVAL

The bill requires, rather than allows, the DEEP commissioner to issue a COP for certain unauthorized structures and reduces the applicants' burden to obtain a COP. Under current law, the commissioner may issue a COP for an unauthorized structure completed before January 1, 1995, provided the applicant demonstrates that the structure complies with all applicable wetlands and coastal structure standards and criteria. The bill instead requires the commissioner to issue a COP for structures that were completed before January 1, 1995 if they were not subject to a municipal or DEEP enforcement action before October 1, 2012.

The bill eliminates the commissioner's authority to require additional wetlands or coastal structure permits when a COP is requested for work on a permitted structure that will likely result in a significant impact to the environment or coastal resources because of changes in conditions or circumstances surrounding the permitted structure.

The bill also specifies that the commissioner must:

1. authorize use of alternative deck surfacing materials and standard and accepted materials for existing seawall repair or replacement when issuing a COP for an unauthorized structure;
2. consider an easement in perpetuity to be the same as an interest in fee simple when evaluating a COP application; and
3. determine, within 30 rather than 45 days, whether a COP should be granted, additional information is required, or the structure is ineligible for a COP.

Under the bill, if DEEP fails to respond within 30 days to a COP application for work on an unauthorized structure, except those in tidal wetlands, the application is deemed approved.

HEARINGS

The bill creates a right for every person or municipality aggrieved

by a DEEP decision to ask for a hearing within 30 days after an order or decision is issued. The DEEP commissioner may not grant a hearing request after 30 days elapse. Following a hearing, the commissioner must affirm or revise the order or decision after considering the presented facts, additional evidence, rebuttals, and any other evidence. Under current law, a hearing is only available following certain DEEP actions. Under the Uniform Administrative Procedure Act, if a hearing is held, the matter becomes a contested case subject to appeal to Superior Court.

The bill prohibits DEEP imposed civil penalties from being assessed until (1) a hearing is conducted and a final order is issued, (2) the period for requesting a hearing has passed and no request is made, or (3) a request for a hearing has been withdrawn.

EXPIRATION OF ORDERS

The bill makes all DEEP orders invalid and discharged after 15 years. An order may be extended by three years if notice of noncompliance is filed on the land record. An extended order expires three years from the date of filing.

TEMPORARY FORTIFICATION

The bill allows municipalities and property owners to fortify property above the coastal jurisdiction line with temporary structures when the National Hurricane Center issues a hurricane warning for any part of the state. Temporary structures may be erected 24 hours before a hurricane is predicted to start and must be removed within 48 hours after a hurricane warning is lifted.

POLICY CHANGES

The bill makes it a policy of federal, state, and local agencies implementing the Coastal Management Act to encourage cooperative use of confined aquatic disposal cells, which are depressions at the bottom of an aquatic system that are used to manage contaminated sediments.

It also makes it a policy, within the coastal boundary, to allow use of

structural solutions when it is necessary to protect any property, not just inhabited structures, developed before January 1, 1995. By law, infrastructure facilities, burial grounds, and water-dependent uses may also be eligible for structural protection.

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.

Coastal Boundary

The “coastal boundary,” within the state's costal 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.

COMMITTEE ACTION

Planning and Development Committee

Joint Favorable

Yea 18 Nay 1 (03/22/2013)