



# Senate

General Assembly

**File No. 61**

January Session, 2013

Senate Bill No. 803

*Senate, March 20, 2013*

The Committee on Environment reported through SEN. MEYER of the 12th Dist., Chairperson of the Committee on the part of the Senate, that the bill ought to pass.

## **AN ACT CONCERNING AQUACULTURE JOB GROWTH.**

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

1 Section 1. Section 26-194 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective from passage*):

3 (a) Except as provided in subsection (e) of this section, the  
4 Commissioner of Agriculture may lease in the name of the state, under  
5 such regulations as the commissioner may prescribe and for a period  
6 not longer than ten years, all shellfish areas that have been conveyed to  
7 the state or placed under state jurisdiction by the town of West Haven  
8 and any undesignated grounds, within the exclusive jurisdiction of the  
9 state, for the purpose of planting and cultivating shellfish. The  
10 authority herein conferred shall include the Cornell Reef, Portchester,  
11 Great Captain's Island, Field Point and Greenwich Point natural beds  
12 as located and described in section 3295 of the general statutes,  
13 revision of 1918. Any person desiring to lease grounds for such  
14 purpose shall make application in writing to the commissioner and all  
15 grounds leased by authority of the provisions of this section shall be

16 leased to the highest responsible bidder, for a minimum fee of four  
17 dollars per acre. Such lease or lease renewal shall require the lessee to  
18 make a good faith effort to cultivate and harvest shellfish from the  
19 leased area. Such lease or lease renewal shall prohibit the lessee from  
20 entering a contract whereby the lessee agrees not to cultivate and  
21 harvest shellfish for any period of time. No lessee may enter an  
22 agreement with a third party that will prevent the lessee from carrying  
23 out the lessee's obligations under the lease unless the Department of  
24 Agriculture and the Attorney General have approved such agreement.  
25 The form of such application and lease shall be approved by the  
26 Attorney General, and all such leases shall be recorded in the records  
27 of the commissioner. No lease shall be granted to a resident of a state  
28 which does not lease shellfish grounds to residents of this state, except  
29 that any nonresident who was granted a lease on or before October 1,  
30 1985, may, upon the expiration of such lease, apply for a renewal or  
31 further lease as provided in this section. The commissioner shall grant  
32 any such lease to nonresidents upon the same terms and conditions as  
33 to residents of this state. Any lessee or holder of shellfish grounds, on  
34 the expiration of any lease thereof which has been or which may be  
35 granted, having fulfilled all of such lessee's or holder's obligations  
36 under the lease shall, upon application to the commissioner, have  
37 preference in the reletting of such ground for a like term to that  
38 granted in the original lease, excluding the rental fee, which shall not  
39 be less than the minimum fee per acre as provided in this subsection. A  
40 lease renewal shall not be granted if the applicant is in arrears for rent  
41 on the original lease of such grounds. Such application for such  
42 renewal or further lease shall be granted without notice or  
43 advertisement of the pendency thereof; provided no renewal or further  
44 lease of such ground shall be granted when the commissioner, for  
45 cause, ceases to lease such ground for shellfish culture. All  
46 assignments or transfers of leases shall be subject to the approval of the  
47 commissioner and shall be recorded in his records. Any person who  
48 interferes with, annoys or molests another in the enjoyment of any  
49 lease authorized by the provisions of this section shall be subject to the  
50 penalties provided in section 26-237. The provisions of sections 26-212,

51 26-215 and 26-232 shall not apply to any shellfish grounds leased  
52 pursuant to the provisions of this section.

53 (b) Upon request of a lessee, the commissioner may divide or  
54 consolidate shellfish grounds leased by such lessee, if the  
55 commissioner determines such division or consolidation to be in the  
56 best interests of the state. The minimum fee per acre shall apply to  
57 shellfish grounds divided or consolidated pursuant to this subsection.

58 (c) The Commissioner of Agriculture shall assess the owner of any  
59 facility that requires a certificate issued pursuant to section 16-50k or  
60 that requires approval by the Federal Energy Regulatory Commission  
61 and that crosses any grounds of Long Island Sound within the  
62 jurisdiction of the state, including, but not limited to, any shellfish area  
63 or leased, designated or granted grounds, an annual host payment fee  
64 of forty cents per linear foot for the length of such facility within the  
65 jurisdiction of the state. [The Commissioner of Agriculture shall  
66 deposit seventy-five per cent of the proceeds of such fee into the  
67 expand and grow Connecticut agriculture account established  
68 pursuant to section 22-38c and shall transfer the remaining twenty-five  
69 per cent to the General Fund.] Seventy-five per cent of the proceeds of  
70 such fee shall be deposited in the Shellfish Fund, established pursuant  
71 to section 26-237b, and in the expand and grow Connecticut  
72 agriculture account, established in section 22-38c. The commissioner  
73 shall determine the portion of such seventy-five per cent that shall be  
74 deposited in each account. The commissioner shall transfer the  
75 remaining twenty-five per cent of such proceeds to the General Fund.

76 (d) Notwithstanding the provisions of subsection (a) of this section,  
77 any owner of a utility line or public use structure that impacts a leased  
78 area shall pay to the lessee the costs of removing or relocating any  
79 shellfish. Nothing in this subsection shall be construed to prohibit the  
80 state or any lessee from recovering damages incurred by the state or  
81 the lessee caused by the installation, construction or presence of such  
82 utility line or public use structure. The Commissioner of Agriculture  
83 may implement a voluntary, supervised comanagement program with

84 lessees in order to relocate shellfish from undesignated areas within  
85 proposed project or corridor impact areas. Any funds received  
86 pursuant to this subsection as a result of such voluntary, supervised  
87 comanagement program shall be deposited in the Shellfish Fund,  
88 established pursuant to section 26-237b.

89 (e) The commissioner may designate to each regional agricultural  
90 science and technology education center, established pursuant to  
91 section 10-64, shellfish areas described in subsection (a) of this section  
92 that are necessary for conducting educational grow-out activities  
93 related to commercial scale aquaculture operations within state  
94 jurisdictional waters, provided: (1) The total acreage designated  
95 pursuant to this subsection for each such center is not more than fifty  
96 acres of restricted relay grow-out beds and fifty acres of approved  
97 harvest beds; and (2) any shellfish areas designated pursuant to this  
98 subsection are not in production at the time of such designation.

99 (f) Notwithstanding subsection (a) of this section, the Commissioner  
100 of Agriculture may lease shellfish areas, as described in subsection (a)  
101 of this section, to: (1) A business entity registered with the Secretary of  
102 the State on or after January 1, 2013, that is determined by the  
103 commissioner to be unaffiliated with any licensed shellfish shellstock  
104 shipper, or (2) a licensed shellfish shellstock shipper with less than five  
105 hundred acres of leased town or state shellfish grounds. The  
106 commissioner may designate such shellfish grounds for lease and  
107 prescribe the application for such lease. Shellfish grounds designated  
108 for lease pursuant to this subsection shall be leased to the highest  
109 responsible bidder, as determined by the commissioner and at a  
110 minimum fee of twenty-five dollars per acre. Such business entity or  
111 licensed shellfish shellstock shipper may be awarded one lease of  
112 shellfish grounds per bidding process conducted pursuant to this  
113 subsection. The issuance of a lease or lease renewal pursuant to this  
114 subsection shall require such lessee to make a good faith effort to  
115 cultivate and harvest shellfish from the leased area and prohibit such  
116 lessee from subleasing, assigning or transferring such leased area.

117     (g) The Commissioner of Agriculture may lease not more than  
 118     twenty-five acres of shellfish grounds to an aquaculture applicant, as  
 119     described in section 22-11f, at an annual rate of twenty-five dollars per  
 120     acre. The issuance of a lease or lease renewal pursuant to this  
 121     subsection shall require such lessee to make a good faith effort to  
 122     cultivate and harvest shellfish from the leased area and prohibit such  
 123     lessee from subleasing, assigning or transferring such leased area.

124     [(f)] (h) The Commissioner of Agriculture may designate an agent  
 125     within the department to exercise the authority of said commissioner  
 126     under this section.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	26-194

**ENV**     *Joint Favorable*

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.

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**OFA Fiscal Note**

**State Impact:**

<b>Agency Affected</b>	<b>Fund-Effect</b>	<b>FY 14 \$</b>	<b>FY 15 \$</b>
Department of Agriculture	GF - Potential Revenue Gain	Less than 55,000	Less than 55,000

**Municipal Impact:** None

**Explanation**

The bill is anticipated to result in a revenue gain of approximately \$55,000 in both FY 14 and FY 15 associated with the lease of shellfish areas as described below:

**Section 1(f)** is anticipated to result in a revenue gain of up to \$50,000 in FY 14 and FY 15 to the Department of Agriculture (DAG) as a result of leasing shellfish areas to various businesses with less than 500 acres of leased town of state shellfish grounds. It is estimated that five business entities would bid up to \$50 per acre for 200 acres of shellfish grounds.

**Section 1(g)** permits DAG to lease not more than 25 acres of shellfish grounds to applicants. It is anticipated that this would generate approximately \$1,250 in FY 14 as five applicants would each lease approximately 10 acres at \$25 per acre. In FY 15, it is anticipated that the number of applicants would increase to 10. These 10 applicants would also lease 10 acres each at \$25 per acre, generating \$2,500 to the state.

Lastly the bill changes the amount distributed to the “expand and grow” account. Currently, the commissioner must deposit 25% of the

proceeds derived from certain utility host payment fees into the General Fund, and the remaining 75% of this revenue to be deposited in the “expand and grow Connecticut agriculture” account which funds a portion of the Connecticut-grown program.

**Section 1(c)** modifies the formula regarding current deposits into the “expand and grow” account. The bill allows DAG to disburse this portion of funds between the Shellfish fund and the “expand and grow” account. It is uncertain how these funds would be distributed in FY 14 and FY 15.

As of February 2, 2013, the available cash in the “expand and grow account” was \$433,907, and for the fiscal year ended June 30, 2012, the balance in this account was \$369,733.

### ***The Out Years***

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

**OLR Bill Analysis****SB 803*****AN ACT CONCERNING AQUACULTURE JOB GROWTH.*****SUMMARY:**

This bill allows the agriculture commissioner to:

1. direct to the Shellfish Fund a portion of the payments received from utility companies with projects crossing Long Island Sound;
2. (a) implement a management program to help shellfishermen relocate shellfish when a utility or public structure project impacts their shellfish beds and (b) direct any proceeds from the program to the Shellfish Fund;
3. lease up to 25 acres of shellfish grounds to a new aquaculture license applicant at \$25 per acre; and
4. subject to certain conditions, lease state shellfish grounds at a cost of least \$25 per acre to certain businesses and licensed shellfish shellstock shippers.

The bill, like existing law, requires shellfish ground lessees to make a good faith effort to cultivate and harvest shellfish from the leased area. The bill also prohibits lessees from subleasing, assigning, or transferring the leased area.

EFFECTIVE DATE: Upon passage

**SHELLFISH FUND*****Utility Company Payments***

The law requires the agriculture commissioner to assess the owners of certain facilities with projects that cross Long Island Sound (e.g.,

electric power lines, gas pipelines, or telecommunications) an annual fee of 40 cents per linear foot located in Connecticut's jurisdiction. The fee applies to facilities that require either (1) a certificate of environmental compatibility from the Connecticut Siting Council or (2) Federal Energy Regulatory Commission approval.

By law, the commissioner must deposit 25% of the proceeds in the General Fund. Current law requires him to deposit the remaining 75% in the "expand and grow Connecticut agriculture" account, which funds the Connecticut-grown program. The bill instead requires him to deposit the remaining 75% in the "expand and grow Connecticut agriculture" account and the Shellfish Fund. The bill allows the commissioner to determine the portion of the 75% to be deposited in each account.

The law allows the commissioner to use the Shellfish Fund for the state shellfish program. Under the program, the Department of Agriculture may purchase cultch (shell or other material upon which young oysters can fasten), management supplies, material, and spawn oyster stock.

### ***Management Program***

By law, utility line or public use structure owners whose projects impact shellfish beds must pay the lessee (shellfishermen) the costs of removing or relocating impacted shellfish. The state or lessee may recover damages incurred because of the installation, construction, or presence of the utility line or public use structure.

This bill authorizes the agriculture commissioner to implement a voluntary, supervised co-management program with lessees to relocate shellfish. Any funds collected as a result of this program must be deposited in the Shellfish Fund.

### **LEASING SHELLFISH GROUNDS**

By law, the agriculture commissioner and towns may lease shellfish beds within their respective jurisdictions for planting and cultivating shellfish. Under current law, the commissioner may, subject to the

attorney general's approval, lease the state beds to the highest responsible bidder for at least \$4 an acre for up to 10 years. Lessees who meet their obligations under the lease are given preference for lease renewals.

The bill, regardless of current law, allows the commissioner to lease state shellfish beds to either a (1) business entity registered with the secretary of the state on or after January 1, 2013 that the commissioner determines is unaffiliated with a licensed shellfish shellstock shipper (i.e., an interstate shellfish harvester and distributor) or (2) licensed shellfish shellstock shipper who has less than 500 acres of leased town or state shellfish grounds.

The bill permits the commissioner to (1) designate which shellfish grounds are for lease and (2) prescribe the lease application. He must lease grounds to the highest responsible bidder for at least \$25 per acre. A business entity or licensed shellfish shellstock shipper can be awarded one lease per bidding process.

**COMMITTEE ACTION**

Environment Committee

Joint Favorable

Yea 17    Nay 11    (03/04/2013)