



Connecticut Department of
**ENERGY &
ENVIRONMENTAL
PROTECTION**

**STATE OF CONNECTICUT
DEPARTMENT OF ENERGY AND ENVIRONMENTAL PROTECTION**

Public Hearing – March 18, 2013
Planning and Development Committee

Testimony Submitted by Commissioner Daniel C. Esty
Presented By Deputy Commissioner Macky McCleary

Committee Senate Bill No. 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

Thank you for the opportunity to present testimony regarding Committee Senate Bill No. 460 – AAC 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. The Department of Energy and Environmental Protection (DEEP) offers the following testimony.

DEEP agrees with some and opposes other concepts within this bill. This bill concerns various aspects of coastal management and regulation.

Overall, DEEP appreciates the Committee's focus on these important, complex and often contentious coastal issues. We recognize that the challenge of balancing private property interests with the protection of the coastal resources and adaptation to a future of sea level rise and more damaging coastal storms. Our shared coastal resources—our marshes, beaches, tidal flats and waters— are essential to creating and maintaining the economic value of our shoreline and coastal property. Creating a more resilient and adaptable shoreline poses a difficult challenge and some stakeholders are likely to be unhappy with the process. Sea level rise and coastal hazards will only increase their assault on our coast. From this perspective, it is clear that coastal management planning and regulation are an integral part of the solution. However, a balanced approach is necessary. We would welcome the opportunity to work with the Committee on finding the right balance.

As the Committee will recall, it was only last year that the General Assembly passed PA 12-101, an ambitious coastal management bill that amended a number of longstanding statutory provisions, several of them dealing with the substance and process of regulating seawalls and other shoreline protective structures. These new provisions, which were the result of protracted negotiations among many interests and stakeholders, have only been in effect since October 1 of last year. Accordingly, it

would not seem prudent to consider such drastic changes as SB 460 proposes without at least allowing last year's bill a chance to operate.

DEEP supports Section 1 of SB 460, which would allow the annual replacement of 50% rather than 25% of pilings in an authorized pile-supported coastal structure as unregulated routine maintenance. This would be a helpful streamlining measure.

Other provisions of the bill, however, would make significant changes to the coastal regulatory program that may result in negative impacts to coastal resources and potentially private property. For example, section 2 of this bill, as written, appears to guarantee issuance of a certificate of permission (COP) for any work associated with a structure, fill, obstruction or encroachment in place since January 1, 1995. This language would have the effect of removing DEEP's ability to determine consistency with statutory standards, and would ensure the continued existence of any unauthorized activities for which an enforcement action was not initiated before 2012. As such, the language as drafted may run counter to the Shoreline Task Force's recommendation for "improving enforcement of existing regulations to reduce the number of illegal coastal structures." Indeed, one could read the bill as favoring unauthorized structures because in several places in the bill, "may" is changed to "shall," requiring DEEP to issue COPs without considering applicable standards or criteria (which have been deleted) or changed circumstances. The last sentence of section 2 would require an easement to be treated as an interest in fee. This provision would allow the proliferation of docks on a single property by treating easements as equivalent to multiple riparian rights of access, possibly resulting in cumulative environmental and navigational impacts.

Section 4 of the bill would make two changes to Coastal Management Act policies. The first, encouraging the "cooperative use of confined aquatic disposal cells," like section 3 of SB 459, raises a promising but complex dredging issue. Confined aquatic disposal cells, or CAD cells, are a useful method for managing contaminated dredged sediments in appropriate circumstances. However, because CAD cells require sophisticated engineering, as well as ongoing monitoring and maintenance, they are generally operated and managed by government agencies such as the U.S. Army Corps of Engineers. While we generally support the concept, DEEP would welcome the opportunity to work with the Committee on the details of what effect this provision is intended to have.

The second provision of this section would amend longstanding CMA policies to allow flood and erosion control structures where unavoidable and necessary to protect pre-1995 developed property, not just pre-1995 inhabited structures. In the context of ongoing sea level rise, this provision would allow property owners to secure their waterward boundaries with structures, with no regulatory oversight. For example, beaches and lawn areas threatened by erosion or sea level rise would be eligible for armoring. DEEP is concerned that protection of lawns may come at the expense of degradation of natural shorelines throughout the state, loss of the public trust rights in beaches and the natural intertidal area. In addition, the proposed approach would be contrary to best practices, sound science, and longstanding national coastal management policy.

The remainder of SB 460, sections 5, 6 and 7, contain several provisions the purpose of which is not immediately apparent. Section 5 of this bill would require a post-decision hearing on some DEEP orders and permits, which would create an additional process. That runs contrary to DEEP's efforts to lean and streamline its application process. Plus, any aggrieved parties would be better served by the opportunity for hearing before, not after, a decision is made. Moreover, in Section 8 of HB 6653 we are proposing to expand the hearing opportunity for most coastal structures and dredging permits, one of

the few remaining DEEP permit programs with no general hearing process. As to Section 6 of this bill, civil penalties under Section 22a-6b of the Connecticut General Statutes are never assessed and payable until an order becomes final in any event, so this section appears to be redundant.

Thank you for the opportunity to present testimony on this proposal. If you should require any additional information, please contact DEEP's legislative liaison Robert LaFrance at (860) 424-3401 or Robert.LaFrance@ct.gov.

