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## **OLR Bill Analysis**

**sSB 1012 (File 345, as amended by Senate "A")\***

### ***AN ACT CONCERNING A BEST PRACTICES GUIDE FOR COASTAL STRUCTURES AND PERMITTING.***

#### **SUMMARY:**

This bill makes many changes to the Coastal Management Act (CMA) and laws related to conducting certain activities in the state's tidal wetlands and coastal, tidal, or navigable waters, as described in the section by section analysis below. Among other things it:

1. allows towns and property owners to temporarily fortify property above the coastal jurisdiction line (see BACKGROUND) before a hurricane or tropical storm;
2. expands the types of structures and activities eligible for a certificate of permission from the Department of Energy and Environmental Protection (DEEP) and requires the DEEP commissioner to issue these certificates for certain unauthorized structures;
3. allows applicants for shoreline flood and erosion control structures to request a hearing when the DEEP commissioner makes a tentative determination to deny a permit application made pursuant to section 401 of the federal Water Pollution Control Act;
4. invalidates and discharges DEEP civil penalty orders that are not judicially enforced within 15 years;
5. allows municipal zoning commissions to exempt elevated decks from coastal site plan review;
6. gives the DEEP commissioner authority to require anyone

removing material from the state's tidal, coastal, or navigable waters to make it available to coastal towns and certain districts for beach nourishment or habitat restoration; and

7. makes it state policy (a) for agencies to encourage cooperative use of confined aquatic disposal cells for dredged material and (b) to allow the use of structural solutions to flood and erosion problems to protect businesses, homes, and attached or integral substantial appurtenances, built before January 1, 1995, under certain circumstances.

The bill requires (1) the state and towns to consider federal National Oceanic and Atmospheric Administration (NOAA) sea level change scenarios when developing certain plans and programs and (2) UConn to update the scenarios at least once every 10 years.

Additionally, it requires DEEP to (1) acquire information relevant to developing a best practices guide for coastal structures permitting from certain governmental and commercial entities and (2) establish a pilot program to help certain residential property owners understand their rights and responsibilities under the state's coastal management and water resources laws.

\*Senate Amendment "A" adds all of the provisions except the one that requires DEEP to acquire information relevant to developing a coastal structures permitting best practices guide.

EFFECTIVE DATE: October 1, 2013, except the provision requiring DEEP to consult with certain entities to acquire information related to a best practices guide takes effect upon passage.

## **§ 1 — BEST PRACTICES GUIDE**

The bill requires DEEP to acquire information related to developing a best practices guide for coastal structures permitting. For this purpose, the agency must, by October 1, 2013, consult with (1) other coastal states' environmental protection and planning and development agencies, (2) commercial entities professionally engaging in activities that need permitting, and (3) the federal government. The

bill does not require DEEP to develop such a guide by a certain deadline.

Within 90 days after completing the consultations, the DEEP commissioner must submit a summary of its results to the chairs and ranking members of the Environment and Planning and Development committees.

### **§ 501 — RISE IN SEA LEVEL**

The bill specifies that “rise in sea level” means the average of the most recent equivalent per decade rise in tidal and coastal waters surface level based on data from NOAA’s Bridgeport and New London tide gauges under the CMA. Currently, it is the average as documented for an annual, decadal, or centenary period at any state sites specified in NOAA publications.

### **§§ 502-505 — APPLYING NOAA SEA LEVEL CHANGE SCENARIOS**

#### ***Plans of Conservation and Development***

**State.** Current law requires the state Office of Policy and Management (OPM) to consider the risks associated with increased coastal erosion from a rise in sea level, as defined by the CMA, when revising the state’s plan of conservation and development (Plan of C&D). The bill instead requires OPM to consider the risks from increased coastal erosion as anticipated in sea level change scenarios published in NOAA’s Technical Report OAR CPO-1 (see BACKGROUND). By law, the state Plan of C&D is revised every five years.

**Municipal.** The law generally requires municipal planning commissions to adopt a municipal plan of conservation and development at least once every 10 years, and regularly review and maintain it. These plans are a statement of policies, goals, and standards for the town’s physical and economic development.

The bill requires the municipal planning commissions or special committees appointed by them to consider NOAA’s sea level change

scenarios in its Technical Report OAR CPO-1 when preparing their plans of conservation and development.

***Civil Preparedness Plan and Program***

By law, the commissioner of emergency services and public protection must prepare a comprehensive plan and program for civil preparedness, subject to the governor's approval. The commissioner may amend the plan and program as needed.

Upon the bill's passage, the state civil preparedness plan and program must consider the sea level change scenarios from NOAA's Technical Report OAR CPO-1.

***Municipal Evacuation or Hazard Mitigation Plan***

Upon the bill's passage, towns must consider the sea level change scenarios from NOAA's Technical Report OAR CPO-1 when preparing an evacuation or hazard mitigation plan. By law, "hazard mitigation" includes such activities as actions taken to reduce or eliminate long-term risk to human life, infrastructure, and property from natural hazards (e.g., flooding, high winds, and wild fires).

***UConn Update***

Under the bill, UConn's Marine Sciences Division must update NOAA's sea level change scenarios from its Technical Report OAR CPO-1 at least once every 10 years. At least 90 days before any update to the scenarios, the division must conduct at least one public hearing on the update. The division must update the scenarios and conduct the hearing within available resources.

**§ 506 — COASTAL SITE PLAN REVIEW EXEMPTION**

The CMA requires towns to review coastal site plans for certain activities conducted at least partly in the coastal boundary and landward of the mean high water mark (see BACKGROUND). A coastal site plan must be filed by an applicant with the applicable municipal zoning commission to help determine if a proposed building, use, structure, or shoreline flood and erosion control structure conforms to municipal zoning regulations and certain state

laws.

The bill allows municipal zoning commissions to exempt, by regulation, from coastal site plan review the construction or modification of elevated decks (which are undefined in the bill). The law already allows such commissions to exempt the construction or modification of walks, terraces, driveways, docks, and detached accessory structures.

#### **§ 507 — USE OF SAND, GRAVEL, AND OTHER MATERIAL**

The bill authorizes the DEEP commissioner to require anyone removing sand, gravel, or other material waterward of the mean high water mark in the state's tidal, coastal, or navigable waters to make it available for authorized beach nourishment and habitat restoration to coastal towns, special taxing districts, and districts created by special act to plan, maintain, and manage flood and erosion control structures. Towns accepting these materials must pay the transport costs and the districts must pay a reasonable fee for the materials.

#### **§ 508 — PILING MAINTENANCE**

The bill expands, from 25% to 50%, the proportion of dock pilings that can be repaired or replaced in a year and still be considered routine maintenance, so long as their footprint, elevation, and materials are unchanged. By law, this type of routine maintenance can be done without a DEEP permit under certain circumstances.

#### **§ 509 — CERTIFICATES OF PERMISSION**

##### ***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, certain activities related to previously authorized work may be eligible for a certificate of permission (COP), which is easier to obtain than a permit. In some cases, routine or substantial maintenance of unauthorized coastal structures, fill, obstructions, and encroachments (“structures”) that were completed prior to specific dates may also be eligible for a COP.

The bill makes the following activities eligible for a COP:

1. beach nourishment undertaken or supervised by DEEP;
2. substantial maintenance of unauthorized structures put in place between June 24, 1939 and January 1, 1995, if they were continuously maintained and serviceable; and
3. minor alterations and amendments to unauthorized structures put in place between June 24, 1939 and January 1, 1995.

***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 competed before January 1, 1995, if 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 such structures when the applicant demonstrates substantial compliance with applicable standards and criteria. It also specifies that the commissioner must, rather than may, allow maintenance of or minor additions to these structures, including use of alternative materials for maintenance of or minor alterations to (1) deck surfacing and (2) seawalls designed using generally accepted engineering practices.

The bill eliminates the commissioner's authority to consider when deciding whether to issue a COP, (1) the date when the applicant acquired the subject property; (2) if the applicant is not otherwise liable for the unauthorized activity; or (3) if the applicant knew, or had reason to know, of the unauthorized activity. It also eliminates his authority to require additional wetlands or coastal structure permits when a COP is requested for a permitted structure, fill, or encroachment that he finds will likely result in a significant impact to the environment or coastal resources because of changes in conditions or circumstances associated with the work.

**Mediation**

The bill allows a person, upon the initial denial of a COP, to request, within 30 days of the denial, a meeting with a DEEP Office of Adjudication mediator. The purpose of the mediation is to try to resolve any disagreement concerning the initial denial.

**Waterfront Access easements**

The bill specifies that waterfront access easements created after January 1, 1995 do not entitle impacted property owners to build additional structures for river or shoreline access.

**§ 510 — TEMPORARY FORTIFICATION**

The bill allows towns and property owners to fortify property above the coastal jurisdiction line with temporary structures (e.g., sandbags or blocks) when the (1) National Hurricane Center issues a hurricane or tropical storm warning for any part of the state or (2) DEEP commissioner authorizes fortification. Temporary structures may be erected 24 hours before the storm is predicted to start. They must be removed within 48 hours after the warning is lifted unless the commissioner extends the deadline.

**§ 511 — POLICY CHANGES**

The bill makes it a policy of federal, state, and local agencies implementing the CMA to encourage cooperative use of confined aquatic disposal cells for dredged material in appropriate circumstances (see BACKGROUND). Confined aquatic disposal cells are depressions at the bottom of a harbor or other aquatic system that are used to manage contaminated sediments.

It also makes it a state policy, within the coastal boundary, to allow use of structural solutions (e.g., seawalls) when it is necessary to protect businesses or homes and attached or integral substantial appurtenances, not just inhabited structures, built before January 1, 1995, if there is no feasible, less environmentally damaging alternative and all reasonable mitigation efforts have been taken to minimize adverse environmental impacts. By law, infrastructure facilities, burial grounds, and water-dependent uses are also eligible for structural

protection.

### **§ 512 — ADVISORY ENGINEERING EVALUATION**

Under the bill, an applicant for a shoreline flood and erosion control structure (e.g., seawalls, jetties, riprap) may request a hearing when the DEEP commissioner makes a tentative determination to deny a permit application prepared by a licensed professional engineer and made pursuant to section 401 of the federal Water Pollution Control Act. The request must be submitted in writing to the commissioner no later than 30 days after he publishes notice of the tentative determination. With the hearing request, the applicant must request that the Connecticut Academy of Science and Engineering (CASE) issue an advisory evaluation of the application's engineering aspects. CASE may charge the applicant a fee for this service, based on a fee schedule created in consultation with the commissioner.

CASE must review submissions from all parties to the application and meet with such parties as necessary to try to resolve any differences. CASE must issue a written advisory evaluation within 120 days of receiving payment and the submissions, though it may choose to extend this deadline by 60 days. The commissioner must consider CASE's evaluation, but it is not binding on him.

The commissioner must hold the requested hearing, in conformity with the Uniform Administrative Procedure Act (CGS 4-166 *et seq.*), within 30 days after CASE submits its evaluation. An applicant may, any time prior to the hearing, withdraw his or her request for a hearing.

### **§ 513 — EXPIRATION OF ORDERS**

The bill makes a DEEP civil penalty order invalid and discharged after 15 years unless the commissioner takes judicial action to enforce the order before then.

### **§ 514 — PILOT PROGRAM**

The bill requires the DEEP commissioner to establish a two-year pilot program for homeowners who receive DEEP noncompliance

notices for violating coastal management or water resources laws. The program, which operates from October 1, 2013 to September 30, 2015, must help owners understand their rights and responsibilities. The commissioner must submit a summary of the pilot program to the Environment and Planning and Development committees by January 1, 2016.

## **BACKGROUND**

### ***NOAA Technical Report OAR CPO-1***

The December 6, 2012 NOAA Technical Report OAR CPO-1 titled, "Global Sea Level Rise Scenarios for the United States National Climate Assessment," provides sea level rise scenarios to help experts and stakeholders analyze vulnerability, impacts, and adaptation strategies. It identifies four global mean sea level rise scenarios ranging from eight inches to 6.6 feet by 2100. The report specifies that the scenarios should be used with local and regional information on climatic, physical, ecological, and biological processes and the coastal communities' culture and economy.

### ***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.

### ***Coastal Zone Management Act***

The state's coastal management act was adopted under the federal Coastal Zone Management Act, which gives the state power to regulate certain federal actions under state law.

### ***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.

**Related Bills**

sSB 1014 (File 490), passed by the Senate, makes nearly identical changes to the definition of “rise in sea level” and the application of NOAA sea level change scenarios when developing certain plans and programs.

sSB 459 (File 412), reported favorably by the Planning and Development and Environment committees, exempts certain decks from coastal site plan review and requires material removed from waterward of the mean high water mark to be offered to towns and certain special districts.

sSB 460 (File 413), reported favorably by the Planning and Development Committee, (1) makes changes to the CMA’s policies; (2) modifies COP exemptions, standards, and procedures; (3) allows constructing temporary structures after a hurricane warning; and (4) generally invalidates and discharges DEEP orders after a certain number of years.

**COMMITTEE ACTION**

Environment Committee

Joint Favorable Substitute  
Yea 28 Nay 0 (03/18/2013)

Planning and Development Committee

Joint Favorable  
Yea 19 Nay 0 (04/23/2013)