

Legislative History for Connecticut Act

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Through you, Mr. President, I cannot say with certainty that all of those folks who own garden shops would be captured by this.

Again, it depends on whether their business falls into the category of arboriculture.

THE CHAIR:

I wonder if I could ask the, and I know that there's a question hanging, but I wonder if I could ask the Senate to stand at ease for just a moment.

With Senator Fasano's indulgence, Senator Looney.

SEN. LOONEY:

Yes, Mr. President. If this item might be passed temporarily.

THE CHAIR:

Thank you, Senator.

Mr. Clerk.

THE CLERK:

Calendar Page 15, Calendar 314, File 462,
Substitute for S.B. 1018 An Act Concerning The
Protection Of Long Island Sound. Favorable Report of
the Committees on Environment, Energy and Technology,
Finance, Revenue and Bonding and Appropriations. The
Clerk is in possession of amendments.

THE CHAIR:

Senator Williams.

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SEN. WILLIAMS:

Thank you, Mr. President. I move adoption of the Joint Committee's Favorable Report and passage of the bill.

THE CHAIR:

On adoption and passage. Will you remark, Senator Williams.

SEN. WILLIAMS:

Yes, I'd like to call amendment LCO6971.

THE CHAIR:

Mr. Clerk.

THE CLERK:

LCO6971 which will be designated Senate Amendment Schedule "A". It is offered by Senator Williams of the 29th District.

THE CHAIR:

Thank you, Mr. Clerk. Senator Williams.

SEN. WILLIAMS:

Thank you, Mr. President. I move adoption of the amendment.

THE CHAIR:

The motion is on adoption. Will you remark?
Senator Williams.

SEN. WILLIAMS:

Yes. This amendment becomes the bill. There are a

number of provisions. For example, it requires that for state departments and commissions, that they not enter into any contract or agreement which would require said Department or council or commission to withhold or retract comments or refrain from participating in any proceedings of the Siting Council.

As to shellfish beds which are owned by the State of Connecticut and lease to individuals or companies, it would require that there be a good faith effort on the part of such individual or company to cultivate and harvest such shellfish bed.

In addition, it provides that any owner of a utility line or public use structure that impacts on such area be responsible for the cost of removing shellfish when mitigating any damage caused by the location of such structure and the installation of such structure.

There is an \$18 per linear foot charge for any cable or other installation which is installed on or after the effective date of this bill if it is so required, if the project is so required to have conformation by the Siting Council or the Federal Energy Regulation Commission. This would not include the repair of any such facility or the replacement of any comparable facility.

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THE CHAIR:

On the amendment. Will you remark further?

Senator Smith.

SEN. SMITH:

Thank you, Mr. President. For the purpose of a couple of questions to the proponent of the amendment.

Senator, the prohibition, some of the prohibitions in this amendment appear to contemplate that lessees of shellfish beds will not enter into agreements in the future that would allow for the crossing of their beds by any, well, by any utility companies. Is that a fair reading the amendment? Through you, Mr. President.

THE CHAIR:

Senator Williams.

SEN. WILLIAMS:

Thank you. There's a provision that would prohibit them from entering into an agreement which would in effect, abandon the leases and not to cultivate or not to harvest.

THE CHAIR:

Senator Smith.

SEN. SMITH:

Thank you, Mr. President. So if they were to, for example, taking some of the things that happened in New Haven Harbor into consideration, if agreements were

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entered into by lessees that were to allow utility companies to place lines across their leased beds but did not include provisions that would preclude them from harvesting or cultivating their beds, would that be something that would still be allowed, even after this amendment? Through you, Mr. President.

THE CHAIR:

Senator Williams.

SEN. WILLIAMS:

That would be possible. Through you, Mr. President.

THE CHAIR:

Senator Smith.

SEN. SMITH:

Thank you, Mr. President. And then changing the hypothetical a little bit. There are in fact agreements in place now, both in New Haven Harbor and in other places. For example, through the proposed Islander East Line that would go out through the shellfish beds, there are several shellfish companies that have already signed agreements with Islander East, and should that line ever go through, those agreements would continue to bind the lessee although the lessee would not be precluded from harvesting or cultivating.

Would this amendment then cause any forfeiture of

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their leases? Through you, Mr. President.

THE CHAIR:

Senator Williams.

SEN. WILLIAMS:

Through you, Mr. President. No.

THE CHAIR:

Senator Smith.

SEN. SMITH:

Thank you, Mr. President. And then with regard to New Haven Harbor, to the extent that there are lessees of shellfish beds there now, and they retain the rights to both cultivating and harvest, but they do have agreements with Cross Sound, for example, that have both allowed the existing line in place and contemplate two future lines, would any lease forms that would come after the passage of this amendment be applicable to that agreement in any way? Through you, Mr. President.

THE CHAIR:

Senator Williams.

SEN. WILLIAMS:

Through you, Mr. President to Senator Smith. As long as they were in good faith going forward on renewal of the lease to cultivate and harvest the shellfish, the answer is no.

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Senator Smith.

SEN. SMITH:

Thank you, Mr. President. As well, you mentioned a phrase here, cultivation and harvest. Several shellfish companies in the State of Connecticut do, in fact, cultivate and harvest. But in fact, most of the shellfish companies in the State of Connecticut do no cultivation at all and they only harvest natural sets.

Here, it requires a good faith effort to both cultivate and harvest. What happens to those companies that do no active cultivation? Through you, Mr. President.

THE CHAIR:

Senator Williams.

SEN. WILLIAMS:

Through you, Mr. President. If there is no good faith effort to cultivate or harvest, then upon renewal of the lease the state could very well look at leasing the bed to another individual or company.

THE CHAIR:

Senator Smith.

SEN. SMITH:

What do you mean by they could? They, the State of Connecticut, the lessor? Through you, Mr. President.

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Senator Williams. Senator Smith. No. Sorry,
Senator Williams.

SEN. WILLIAMS:

Yes. Through you, Mr. President, the answer is
yes.

THE CHAIR:

Senator Smith.

SEN. SMITH:

Thank you, Mr. President. And you said, you used
the word or there. If they do not have a good faith
effort to harvest or cultivate. The amendment says a
good faith effort to both harvest and cultivate.
Earlier today, we discussed at length a bill that
required a fairly literal interpretation by courts of
the meanings of statutes. And means and. Not or. And
here it says and.

If companies admittedly do not cultivate, but do
not harvest, would the application of this statute put
them in a violation of the language of this amendment?

THE CHAIR:

Senator Williams.

SEN. WILLIAMS:

Through you, Mr. President. The two go hand in
hand. One could not cultivate forever, theoretically.
One would have to harvest at some point.

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THE CHAIR:

Senator Smith.

SEN. SMITH:

Thank you, Mr. President. Actually, it's the reverse. People harvest but do not cultivate. Would they be in violation of this language?

THE CHAIR:

Senator Williams, with that correction, would you care to respond?

SEN. WILLIAMS:

Thank you, Mr. President. Again, the two go hand in hand. That would be my response.

THE CHAIR:

Senator Smith.

SEN. SMITH:

Thank you, Mr. President. If you could, I'd like to now look for a couple of moments at the idea of a good faith effort. What would your definition of a good faith effort at cultivation and harvest encompass? Through you, Mr. President.

THE CHAIR:

Senator Williams.

SEN. WILLIAMS:

Thank you, Mr. President. A reasonable application of effort and resource toward some actual cultivation

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and some actual harvesting.

THE CHAIR:

Senator Williams.

SEN. SMITH:

Actually, I think I'm up to bat now, Mr. President.

THE CHAIR:

I'm sorry.

SEN. SMITH:

Yes. So if a company failed to take reasonable efforts for one year, would they then be in violation of the language of this amendment?

THE CHAIR:

Senator Williams.

SEN. WILLIAMS:

Thank you, Mr. President. My understanding in our conversations earlier that the leases are three year leases, to the extent that they had abandoned the lease for a year, the answer might be yes.

But if they were indeed, allowing cultivation to take place in anticipation of harvesting, then the answer would be no.

THE CHAIR:

Senator Smith.

SEN. SMITH:

Thank you, Mr. President. There are underwater

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agricultural techniques as with above dry ground agricultural techniques that suggest that allowing beds to remain fallow for a while is good practice.

On the other hand, certain companies are known to stockpile, or inventory leases without ever using them. How would one distinguish between the two? Through you, Mr. President, understanding that the idea is to prevent companies from inventorying leases and I assume that's one of the things that the amendment is trying to get at.

How would one distinguish between an agricultural technique allowing a field, a bed to go fallow and someone who is stockpiling or inventorying leases. Through you, Mr. President.

THE CHAIR:

Senator Williams.

SEN. WILLIAMS:

Thank you, Mr. President. Through you, I think our previous exchange pretty much define that. If someone has abandoned and not providing any reasonable application of resource toward the cultivation and harvesting, then one could conclude that they are not making a good faith effort to harvest and cultivate as required.

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Senator Smith.

SEN. SMITH:

Thank you, Mr. President. And with regard to a company that might lease beds but never go out and do any activity at all, but went to others and allowed other people to come in and do the activity, would that be an activity that would be allowed under this amendment, a good faith effort? Through you, Mr. President.

THE CHAIR:

Senator Williams.

SEN. WILLIAMS:

Thank you, Mr. President. Through you, yes. That would be in the manner of subcontractor.

THE CHAIR:

Senator Smith.

SEN. SMITH:

Thank you, Mr. President. If I could, now turning to the \$18 per linear foot charge. If I could just ask you, where that \$18 per linear charge, how that number was developed, where it came from?

THE CHAIR:

Senator.

SEN. WILLIAMS:

Thank you, Mr. President. Through you, by taking a

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look at the practice in other states, we don't have a lot to compare ourselves to, but New York is our neighbor and they impose a similar fee.

THE CHAIR:

Senator Smith.

SEN. SMITH:

Thank you, Mr. President. I appreciate that. The damage done by these lines, for example, the Iroquois Line that went through Milford Harbor created almost a quarter mile path in which nothing grows, not seaweed, not moss, not shellfish, fin fish can't feed there. The environmental damage that was done by that is incalculable. And the thought that at \$18 per linear foot is a fair number I think is not well taken. I understand that the amendment is here before us tonight. I'd like the Chair and other people who serve on that Committee to think about making the \$18 per square foot a floor, rather than just a fixed number. A line can have very little damage and perhaps \$18 per linear foot is an appropriate number.

A line could have massive damage that would require the state to take enormously expensive steps to remediate the damage done and \$100 per linear foot might not even be a reasonable number. It doesn't seem to me that locking the state into a single number like that is

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an appropriate state policy.

I appreciate the Chairman's indulgence in my questions here and I think this amendment on balance is better than the situation we have today and goes a long way to remedying some of the difficulties that the state and some of its residents have encountered and hopefully will prevent some of those very fact patterns that we've been describing here today from ever occurring again, and I urge its adoption.

Thank you, Mr. President.

THE CHAIR:

Thank you, Senator. It's rare that an attorney has such an encyclopedic knowledge of shellfish. Will you remark further? On the amendment? Try your minds. All in -- Senator Gunther. The esteemed Senator Gunther.

SEN. GUNTHER:

I'm not steaming, Mr. President. Did you say I'm steaming?

THE CHAIR:

Not yet, Senator.

SEN. GUNTHER:

Oh, I just thought I'd check up. I'd like to follow up a little bit. The discussion that you just had is very technical, that my good friend Senator Smith went through.

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But I'm wondering if the Chair of the Environment Committee, if I can get his attention, hello.

THE CHAIR:

Senator Williams, I believe the Dean of the Senate wishes to address a penetrating and withering question your way.

SEN. GUNTHER:

Love to undress.

THE CHAIR:

Please don't undress the Senator, Senator. Please address him.

SEN. GUNTHER:

Okay. The discussion that just took place, I'm just wondering, through you, Mr. President, I don't know if you really appreciate the cultivation of clams and oysters. There's a difference between clamming and oystering.

You'll find out that most of the clamming is done without any cultivation. This is all natural growth. What they do is just go through these beds and they pick up, well, if they can get the little counts, they're worth more than the big quahogs and that type of thing. So it is almost a cultivation type thing.

But when it comes to oystering, you have to, an oyster is about a three to four year product from the

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State of Connecticut. What you've got to do is, you've got to prepare your beds to put your cultch onto it. You have to mop those beds after they get their set on it and make certain that the starfish and the drills are not on them.

I mean, as a law, it's a three to four year process, even on transplant and everything else. The terminology here, and I know that sometimes we can get hung up on a little word. But the difference between, if you're going to hold a man to cultivation and to harvesting, that would be more applicable to oysters than it would be to the clamming.

But the verbiage in here and you used it twice, you've used and, and I think that might sort of pyramid on the fellow that is clamming out there and doesn't have to do the cultivation.

I would have liked to seen some correction on that because I don't know if it's possible to even stand by and take those ors, put an or in, instead of the and, because you're writing this into law and these guys are going to have to live with it. And so, Mr. President, is there any possibility we can stand aside on this thing and at this hour, I know it's no fun, but I hate like hell to see us take and draft a law that you guys out there, you know, we always say, to be a shell

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fisherman you've got to have a strong back and a weak mind. That's tough work out there.

And I don't know, to have it being under the gun, whether we shouldn't take the time to make that little correction.

THE CHAIR: (SENATOR COLEMAN IN THE CHAIR)

Senator Williams, if you care to respond?

SEN. WILLIAMS:

Thank you, Mr. President. Through you to Senator Gunther. I know the hour is late. I hope we don't talk this bill to death, but do I take it from your question that you have a friendly amendment?

SEN. GUNTHER:

I believe that Senator Smith had an amendment that was prepared. I don't know, have you withdrawn that? Pardon me, through you, Mr. President.

THE CHAIR:

Through the Chair, please. Senator Williams.

SEN. WILLIAMS:

You know, I think, thank you, Mr. President. Through you to Senator Gunther. I believe in our discussion that we had before with, where I was speaking with Senator Smith, I was characterizing the cultivation and the harvesting going hand in hand.

So I think even though what you're talking about in

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terms of a longer period of harvesting for certain types of shellfish versus others, as long as there is a good faith effort to be engaged in that activity, then that would be permitted under these provisions.

THE CHAIR:

Senator Gunther.

SEN. GUNTHER:

Mr. President, through you. In other words, you're telling me that is not a hard and fast statutory rule that you're putting in here, that if the individual does not cultivate, that would not apply against him and he couldn't get his leases and that reverting back to the state because of that delinquency in the law? Is that true?

THE CHAIR:

Senator Williams.

SEN. WILLIAMS:

Thank you, Mr. President. Through you, again, the two would go hand in hand and there might be a longer extended period of cultivation before harvesting. But I hope the cultivation wouldn't go on forever. I would assume that at some point the shellfish that is cultivated would be harvested. So anyway, that's where the good faith effort comes in.

Now, if someone has abandoned the beds and there

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are neither cultivating nor harvesting, then we have a problem. But even though there is the word and there, I don't think anyone could be cultivating and harvesting at the same time all the time.

So this contemplates the two working together.

THE CHAIR:

Senator Gunther.

SEN. GUNTHER:

Through you, Mr. President. I, you know, I don't know how I can impress you. There are some shell fishermen who never cultivate. This is natural growth that goes out there, sets itself. They wait until the animal has matured to the point that he wants to get out there and get them. He does not cultivate, ever.

So I don't want to be, Mr. President, I don't like to be a technicrat on this. There's a lot of good things in this bill. And I do think when utilities company will go in and lease grounds and they're gone forever, and they're out of work forever, we got grounds out there that there are shell fishermen who would give their eye teeth to have them. But they've been abandoned because they've been used for the utility company to put lines through and that type of thing.

So the abandonment, I agree 100%. There are people that have to take and leave grounds that they aren't

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cultivating as a buffer between his neighbor in order that they know where these grounds are.

So, you know, it's a lot of technical stuff in this. And I just wanted to have the record show that we're not going to hang these poor little guys out there that do pretty damned hard work. It isn't as if it's something you're going to throw a line in the water and pull it home and they've got it.

So I don't know if we've resolved that question. I wish we could take and put the ors instead of the ands and I think that's a simple little thing that would correct it.

Now, there's another question I'll put through you. I don't know if the record's going to help these guys somewhere down the line but on the \$18 I'll agree with Senator Smith. You know, when they're out there paying off in the millions and that type of thing, \$18 penalty, I think that should be a base and it should be from there up.

I'd like to see that money put into a fund and maybe in this language. The fund of that, accumulating that money to go into restoration and seeding.

Through you, Mr. President, is that possible that that will be done entirely by the Aquaculture Department of the State of Connecticut? Is that the intention of

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taking that fund and having them do the seeding?

And if I might, just to give you a little background. We have a multi-million dollar aquaculture center. We had up until the retirement of about five people, we had 14 employees, all of them with either a BS to a PhD in marine fisheries, so that this is where the operation ought to be and we could utilize that money and get a heck of a lot more bang for the buck.

They already operate the program that we have where we take, I think it's 50 cents or 75 cents a bushel and that goes into a fund that we actually cultch, in other words, we improve the beds that we have out there now. I can't see any idea of setting this up and hiring a contractor.

So the question, that's a long winded question I put to you, but is this applicable to having the aquaculture center actually do the processing and seeding and restoration?

THE CHAIR:

Senator Williams, do you care to respond?

SEN. WILLIAMS:

Yes, thank you, Mr. President. Through you to Senator Gunther. Yes, that would make the most sense. Really, what the fund is supposed to be for is for the restoration, preservation and overall protection of the

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State of Connecticut shellfish beds.

THE CHAIR:

Senator Gunther.

SEN. GUNTHER:

I take it, Mr. President, that answer is yes, that that is the intention, that they would be doing it through the process through the aquaculture.

Now, if I may just give you a little quickie. I have an amendment, LCO6925. May I have the Clerk call that amendment?

THE CHAIR:

Will the Clerk please call LCO6925. I'm sorry, the item on the floor is Senate Amendment Senate "A", Senator Gunther.

SEN. GUNTHER:

All right. A little late in the day. A little premature. I'll revisit it after we pass this amendment.

THE CHAIR:

The item under consideration is Senate Amendment Schedule "A". Would you care to remark further?
Senator Smith.

SEN. SMITH:

Thank you, Mr. President. For the second time, a couple of questions to the proponent. Senator Gunther

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raised an interesting point.

I believe down in Norwalk where the utility lines cross the Sound down there, the utility companies have leased beds over which their utility lines cross, and I do not believe that they do, nor have they done, I do not believe they intend to do any shell fishing, harvesting, cultivation, or otherwise. Would their leases then revert to the State of Connecticut? Through you, Mr. President.

THE CHAIR:

Senator Williams.

SEN. WILLIAMS:

Thank you, Mr. President. Through you to Senator Smith. If they have, indeed, abandoned any cultivation or harvesting and these are State of Connecticut shellfish beds, then I would anticipate that at the conclusion of their lease that the state would take a look and determine whether there is another person or company that would make the good faith effort to cultivate and harvest.

THE CHAIR:

Senator Smith.

SEN. SMITH:

Thank you, Mr. President. You said abandon. What if a company like the utilities never commenced, there

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is nothing to abandon because they never did any shell fishing whatever. Would this be applicable to them as well? Through you, Mr. President.

THE CHAIR:

Senator Smith. I'm sorry, Senator Williams.

SEN. WILLIAMS:

Through you to Senator Smith. If I understand the question correction, if they have never abandoned and they have made the good faith effort, then that would not apply to them.

THE CHAIR:

Senator Smith.

SEN. SMITH:

Thank you, Mr. President. No, they never made a good faith effort. They never started. In order to abandon something, you must first be engaged or have it.

The question here is, if they have never done any shell fishing, never had a good faith desire to engage in shell fishing, does this section, is this section designed to be applicable to them? Through you, Mr. President.

THE CHAIR:

Senator Williams.

SEN. WILLIAMS:

Through you, to Senator Smith, yes.

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THE CHAIR:

Senator Smith.

SEN. SMITH:

Thank you, Mr. President. And then you indicated that at the end of their lease, the state would then take a look. Is there discretion then, in the State of Connecticut to renew the lease notwithstanding the fact that there is an absence of a good faith attempt to either cultivate or harvest?

THE CHAIR:

Senator Williams.

SEN. WILLIAMS:

Yes, Mr. President. Through you, yes.

THE CHAIR:

Senator Smith.

SEN. SMITH:

Thank you, Mr. President. So this amendment that is not a blanket prohibition on the abandonment of cultivation and harvest, but merely a discretion in the State of Connecticut to then review the leases when they come up for renewal? Through you, Mr. President.

THE CHAIR:

Senator Williams.

SEN. WILLIAMS:

Mr. President, through you, it gives the state that

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ability, yes.

THE CHAIR:

Senator Smith.

SEN. SMITH:

Thank you, Mr. President. That's interesting. So the state could continue to renew leases even if someone had abandoned good faith efforts to cultivate and harvest? Through you, Mr. President.

THE CHAIR:

Senator Williams, do you care to respond?

SEN. WILLIAMS:

Thank you, Mr. President. I'm not sure I could see the circumstances under which that might happen, but it could happen.

THE CHAIR:

Senator Williams. I'm sorry. Senator Smith.

SEN. SMITH:

Thank you, Mr. President. You said you didn't see the circumstances. I'm positing the circumstances, I believe it's the Northeast Utility lines that run through Norwalk Harbor to Long Island. That's a circumstance that not only will it occur, it has occurred and is occurring.

Were you suggesting that that fact pattern does not fit into the one we're discussing here? Through you,

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Mr. President.

THE CHAIR:

Senator Williams.

SEN. WILLIAMS:

Thank you, Mr. President. You asked me about that fact pattern before and I said that yes, it would apply.

THE CHAIR:

Senator Smith.

SEN. SMITH:

Thank you, Mr. President.

THE CHAIR:

Will you remark further? Will you remark further? If there are no further remarks, the Chair will try your minds. All those in favor of Senate Amendment Schedule "A" please indicate by saying "aye".

ASSEMBLY:

Aye.

THE CHAIR:

All opposed say no. The ayes have it. Senate "A" is adopted.

Will you remark further on the bill as amended?

Senator Gunther.

SEN. GUNTHER:

Mr. President, the Clerk has amendment LC06925. Would he please call that.

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THE CLERK:

LC06925 which will be designated Senate Amendment
Schedule "B". It is offered by Senator Gunther of the
21st District.

THE CHAIR:

Senator Gunther.

SEN. GUNTHER:

Mr. President, I move adoption of the amendment and
I'll explain it. It's very short.

THE CHAIR:

The question before the Chamber is Senate Amendment
Schedule "B".

SEN. GUNTHER:

This amendment would actually set up a one year
moratorium on the use of synthetic manufactured
pesticides that may be applied in the municipalities
that border Long Island Sound for a period of one year
from the effective date.

It's actually a one year moratorium on using these
highly toxic sprays and there's an exception here that
if there's an immediate threat of human health or
safety, determined by both the Commissioner of Public
Health and the Commissioner of Environmental Protection
that could be used.

Now, Mr. President, you might say what are you

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going to do if you have a situation and to control it and you might have to use the highly toxic sprays and that. There are, in the meantime, there are botanicals and biological sprays that are used in insect and pest control and especially in mosquitoes.

There is one such preparation that is called BTI. It's bacillus thuringiensis which is a type of bacterium or virus that affects the mosquito and is very, very successful and they have been using some of that. But there are towns in the State of Connecticut that have been spraying with some of these toxic materials. And what happens, whether you aren't aware of it, if you're aware from the shore, you may not be aware of it, but the whole western end of the Sound we've had a disaster in our lobster industry. A lot of the lobstermen have gone out of business completely. They haven't even put their pots in.

Now, the only reason we knew about the coincidence of the spraying and the loss and the death of the lobsters down there is many of the fishermen were telling us, look, every time they spray down there, we have a kill. We have nothing but dead lobsters.

We've had a two year period and there's several million dollars that's been spent already to try to determine what is causing the death of the lobsters.

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Three years ago we had a joint meeting between New York, Connecticut and the feds when we sat down and discussed this. I, as a member of the Atlantic States Marine Fisheries and the other Commissioners, and New York State. At that time I brought up the use of malafayan, especially in New York State and they said, oh, pooh, pooh, it couldn't happen, that it dilutes and it couldn't be affecting this.

They're now, the latest report which is in the past six months, they have taken a serious look at it and they believe that this is at least one of the factors that could be decimating our lobster population. The final report isn't in. So when I say for the next year, if we don't have to use the highly toxic chemicals and that, and we're actually put a mandatory, mandatory non-use of them, we could at least them a year to take and conduct that study and see if it doesn't do a come back for us on it.

This not only affects the lobsters and that, but it affects other fin fish and that. So this is the least that we could do to give them a break. And I know this is a late hour, but I think that it's worth our time to take and pass a one year moratorium and it has these conditions that you can use the highly toxic materials if necessary, if the occasion comes up.

But I'd like to have a roll call vote on this, Mr. President.

THE CHAIR:

A roll call vote has been requested. At the time the vote is taken, it will be taken by roll call.

THE CHAIR:

Will you remark further on Senate "B"? Senator Cook.

SEN. COOK:

Thank you very much, Mr. President. Good morning. I rise in support of this amendment and I never cease to be astounded by the courage and environmental aplomb of my colleague, Dr. Gunther. I think this would be a good move for Long Island Sound. It will give us an opportunity to find out and it will also, I don't think it's going to interfere with common practice because there are alternatives for all of the synthetic pesticides.

So I would heartily support this amendment.

THE CHAIR:

Thank you, Senator. Will you remark further? Senator Williams.

SEN. WILLIAMS:

Yes, thank you, Mr. President. I appreciate Senator Gunther's effort in this and I appreciate his

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interest in this moratorium. However, we have not had a chance to consider in any way the ramifications of this particular proposal. It may well be a good one. There may well be numerous other issues that we have not had a chance to consider.

Therefore, I will have to oppose this and ask for a roll call vote.

THE CHAIR:

Thank you, Senator Williams. A roll call vote was previously requested. At the time the vote is taken, it will be taken by roll. Will you remark further on Senate "B"? Will you remark further?

If not, I'd ask the Clerk to announce the pendency of a roll call vote.

THE CLERK:

An immediate roll call has been ordered in the Senate. Will all Senators please return to the Chamber.

An immediate roll call has been ordered in the Senate. Will all Senators please return to the Chamber.

THE CHAIR:

The machine will be opened.

THE CHAIR:

Have all Senators voted? Have all Senators voted? I all members have voted, the machine will be locked. Would the Clerk please take the tally.

pat

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THE CLERK:

Motion is on adoption of Senate Amendment Schedule "B".

Total number voting, 34. Necessary for adoption, 18. Those voting yea, 14; those voting nay, 20. Those absent and not voting, 2.

THE CHAIR:

Senate "B" is rejected. Will you remark further on the bill as amended? Will you remark further?

Senator Williams.

SEN. WILLIAMS:

Thank you. If there is no objection, I would move this to the Consent Calendar.

THE CHAIR:

Seeing no objection, this item is placed on the Consent Calendar.

Mr. Clerk.

Senator Looney.

SEN. LOONEY:

Thank you very much, Mr. President. I wanted to remove a couple of items that had been previously placed on Consent. First of all, Calendar Page 5, Calendar 491, H.B. 5159. If that item might be removed from the Consent Calendar and marked PR.

THE CLERK:

pat

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The Senate is now voting by roll call on the
Consent Calendar. Will all Senators please return to
the Chamber.

The Senate is now voting by roll call on the
Consent Calendar. Will all Senators please return to
the Chamber.

THE CHAIR:

Have all members voted? If all members have voted,
the machine will be locked. Would the Clerk please take
a tally.

THE CLERK:

The motion is on adoption of Consent Calendar No.
3.

Total number voting, 34. Necessary for adoption,
19. Those voting yea, 34; those voting nay, 0. Those
absent and not voting, 2.

THE CHAIR:

The Consent Calendar No. 3 is passed.

Senator Looney.

SEN. LOONEY:

Thank you, Mr. President. Mr. President, I would
move for suspension for immediate transmittal to the
House of Representatives of all items acted upon during
this session.

THE CHAIR:

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that item Pass Temporarily.

Next item on Senate Agenda No. 1, Substitute HB No. 5504. Would ask for suspension to take up that item?

THE PRESIDENT:

Without objection, so ordered.

SEN. LOONEY:

Thank you, Madam President. Would also mark that item Pass Temporarily.

The third item in that part of Senate Agenda No. 1, Madam President, Substitute HB 6526. Madam President, would ask for suspension to take up that item.

THE PRESIDENT:

Without objection, so ordered.

SEN. LOONEY:

Thank you, Madam President. Would mark HB 6526 as Go.

Next, Madam President, Substitute HB 5022. Would ask for suspension to take up that item.

THE PRESIDENT:

Without objection, so ordered.

SEN. LOONEY:

Thank you, Madam President. I would mark HB 5022 as Go.

Next, Madam President, on Senate Agenda No. 1 in the category of Disagreeing Actions, Substitute SB No.

1018. Madam President, I would move this item to the
Consent Calendar.

THE PRESIDENT:

Without objection, so ordered.

SEN. LOONEY:

And, Madam President, also on that portion of the agenda, HB No. 5837. Madam President, would mark that item Pass Temporarily.

Thank you, Madam President. That concludes the markings at this time.

THE PRESIDENT:

Thank you, sir.

Once again I will ask if there are any points of personal privilege or announcements?

If not, would the Clerk please begin with the Calendar?

THE CLERK:

Senate Calendar for Wednesday, June 4, 2003.
Calendar Page 1, Favorable Reports, Calendar No. 496,
File No. 564 and 751, HB No. 5352, An Act concerning the
suspension of motor vehicle operators' licenses, as
amended by House Amendment Schedule "A". Favorable
report of the Committees on Judiciary and
Transportation.

THE PRESIDENT:

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return to the Chamber? Immediate Roll Call has been ordered in the Senate on the Consent Calendar. Will all Senators please return to the Chamber?

Madam President, those items placed on the first Consent Calendar begin on Calendar Page 1, Calendar No. 496, HB 5352; Calendar Page 2, Calendar 565, Substitute for HB 6226; Calendar 568, Substitute for HB 6677; Calendar Page 4, Calendar 569, HB 6518; Calendar 572, Substitute for HB 6573; Calendar 445, HB 5215; Calendar Page 4, Calendar 194, Substitute for SB 936; Calendar 358, Substitute for SB 863.

And from Senate Agenda No. 1, Substitute HB 6526, Substitute HB 5022 and Substitute SB 1018.

Madam President, that completes those items previously placed on the first Consent Calendar.

THE PRESIDENT:

Thank you, sir. Would you once again announce a Roll Call vote? The machine will be opened.

THE CLERK:

The Senate is now voting by Roll Call on the Consent Calendar. Will all Senators please return to the Chamber? The Senate is now voting by Roll Call on the Consent Calendar. Will all Senators please return to the Chamber?

THE PRESIDENT:

Have all members voted? If all members have voted
-- if all members have voted the machine will be locked.

Clerk, please announce the tally.

THE CLERK:

The motion is on adoption of Consent Calendar No.

1.

Total number voting, 34;

Necessary for adoption, 18;

Those voting Yea, 34;

Those voting Nay, 0;

Those absent and not voting, 2.

THE PRESIDENT:

The Consent Calendar is adopted.

Senator Looney.

SEN. LOONEY:

Yes. Thank you, Madam President. Madam President,
I would move for immediate transmittal to the House of
Representatives of any items upon which we've acted that
require additional House action.

THE PRESIDENT:

Without objection, so ordered.

SEN. LOONEY:

Madam President?

THE PRESIDENT:

Senator Looney.

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HOUSE

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House of Representatives

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will be opened.

THE CLERK:

The House of Representatives is voting by Roll Call. Members to the Chamber. The House is voting by Roll Call. Members to the Chamber please.

DEPUTY SPEAKER HYSLOP:

Have all members voted? If all members have voted, please check the machine. Make sure your vote is properly recorded. The machine will be locked and the Clerk will take the tally.

The Clerk will announce the tally.

THE CLERK:

HB 5139, as amended by House "A" and "B",

Total number voting, 148;

Necessary for passage, 75;

Those voting Yea, 148;

Those voting Nay, 0;

Absent, not voting, 2.

DEPUTY SPEAKER HYSLOP:

The bill as amended passes.

Clerk, please call Calendar 598.

THE CLERK:

On Page 15, Calendar 598, Substitute for SB No. 1018, An Act concerning the protection of Long Island Sound. Favorable report of the Committee on

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Appropriations.

DEPUTY SPEAKER HYSLOP:

Representative Widlitz.

REP. WIDLITZ:

(98TH)

Thank you, Mr. Speaker. Mr. Speaker, I move acceptance of the Joint Committee's favorable report and passage of the bill in concurrence with the Senate.

DEPUTY SPEAKER HYSLOP:

The question is on acceptance and passage in concurrence with the Senate.

Will you remark?

REP. WIDLITZ:

(98th)

Yes. Thank you, Mr. Speaker. The Clerk has LCO 6971, Senate "A", which becomes the bill. Will he please call and I be allowed to summarize?

DEPUTY SPEAKER HYSLOP:

Clerk, please call LCO 6971, previously designated Senate Amendment "A". And the Representative has asked leave to summarize.

THE CLERK:

LCO No. 6971, Senate "A", offered by Senator Williams and Representative Widlitz.

DEPUTY SPEAKER HYSLOP:

Representative Widlitz.

REP. WIDLITZ:

(98th)

Thank you, Mr. Speaker. The amendment requires lessees of shellfish beds to engage in good-faith efforts to harvest and cultivate such shellfish. It also bars the Agriculture Department and certain other State agencies from entering agreements with parties to Council hearings and proceedings concerning certificate applications. Siting Council I'm referring to. That requires the agencies to refrain from participating in or withdrawing from the proceedings and requires the Council to consult with and solicit written comments from the Agriculture Department before holding a hearing.

As I mentioned before, it requires fishermen leasing shellfish beds from the State or fishing shellfish beds designated or granted by towns to actually make a good-faith effort to cultivate and harvest them, which is the purpose of the lease.

It prohibits shellfishermen from entering into contracts in which they agree not to cultivate or harvest the beds or from agreeing with a third party not to carry out their lease obligations without the approval of the Agriculture Department or the Attorney -
- and the Attorney General.

It requires that utility line or public use structure owners whose project impact the shellfish bed

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pay the shellfishermen the cost of removing or relocating the shellfish, authorizing the Environmental Protection Commissioner when considering an application to dredge, build any structure or place any fill in the State's coastal, tidal or navigable waters to hold a public hearing if he believes it will serve the public interest and, upon receipt from 25 people at a request for a public -- a petition for a public hearing, will conduct such a public hearing.

This amendment also adds a new fee on facilities for electric transmission or gas pipelines crossing Long Island Sound under certain conditions. But upon adoption of this amendment, Mr. Speaker, I will call another amendment to delete that particular section.

I move adoption, Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

The question is on adoption of Senate Amendment "A". Will you remark on Senate Amendment "A"? Will you remark on Senate Amendment "A"? If not, we'll try your minds.

All those in favor signify by saying Aye?

VOICES:

Aye.

DEPUTY SPEAKER HYSLOP:

Those opposed?

The Ayes have it. Senate "A" is adopted.

Will you remark further on the bill as amended?

Representative Widlitz.

REP. WIDLITZ: (98th)

Thank you, Mr. Speaker. The Clerk has LCO 7408.

Will he please call and I be allowed to summarize?

DEPUTY SPEAKER HYSLOP:

Clerk, please call LCO 7408, to be designated House "A". And the Representative has asked leave to summarize.

THE CLERK:

LCO No. 7408, House "A", offered by Representative Widlitz and Senator Williams.

DEPUTY SPEAKER HYSLOP:

Representative Widlitz.

REP. WIDLITZ: (98th)

Thank you, Mr. Speaker. This amendment eliminates that provision I just referred to which establishes the fee per linear foot on new facility constructions in the Sound. It's an issue which demands more study. The previous amendment called for an \$18.00-per-linear-foot fee. We'd like to take another look at this and come up with a better way of sustaining funding to remediate damaged shellfish beds, seed new areas and so forth.

So I move adoption of the amendment, Mr. Speaker.

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DEPUTY SPEAKER HYSLOP:

The question is on adoption of House "A".

Will you remark on House "A"? Will you remark on House "A"? If not, we'll try your minds.

All those in favor signify by saying Aye?

VOICES:

Aye.

DEPUTY SPEAKER HYSLOP:

Those opposed?

The Ayes have it. House "A" is adopted.

Will you remark further on the bill as amended?

Representative Widlitz.

REP. WIDLITZ:

(98TH)

Thank you, Mr. Speaker. Mr. Speaker, during the past three years, we've seen, at best, questionable, if not unethical, actions between leaseholders of shellfish beds and big energy companies. The floor of the Sound is within the public trust and it's our responsibility to ensure its use, not abuse, in a way that is protective of our public natural resources.

Leases are for the purpose of cultivating and harvesting shellfish. Yet, we've seen lessors -- lessees, rather, enter into contracts, third-party, lucrative contracts, some with gag orders imposed, without any oversight from government agencies.

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We've begun to take many steps necessary to plan for the protection of Long Island Sound, one of our most precious and fragile natural resources. During this session we've imposed a temporary moratorium on new utility crossings of the Sound. We voted for Siting Council reforms. And we voted for enhanced planning procedures for future approval and sitings of energy facilities.

This bill will provide additional safeguards to begin the implementation of comprehensive protections for our natural resources and assist us in meeting our most important charge of protecting the public trust of Long Island Sound.

I urge adoption. And I urge my colleagues to support the bill. Thank you, Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Will you remark further on the bill as amended?

Representative Winkler.

REP. WINKLER: (41st)

Thank you, Mr. Speaker. A question, through you, to Representative Widlitz.

DEPUTY SPEAKER HYSLOP:

Proceed.

REP. WINKLER: (41st)

Thank you, Madam Speaker. Representative Widlitz -

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- Mr. Speaker. I'm sorry.

Representative Widlitz, to your knowledge, are we leasing any of the State beds to the Mohegan Tribe at all?

DEPUTY SPEAKER HYSLOP:

Representative Widlitz.

REP. WIDLITZ: (98th)

Through you, Mr. Speaker. I do not have an answer to that question.

DEPUTY SPEAKER HYSLOP:

Representative Winkler.

REP. WINKLER: (41st)

Through you, sir. I am concerned. And I would like to know that answer. I think it's important that we know that and, if we are, that they are adhering to the rules and regulations of the State of Connecticut.

DEPUTY SPEAKER HYSLOP:

Representative Widlitz.

REP. WIDLITZ: (98th)

Through you, Mr. Speaker. Anyone who -- any party leasing shellfish beds from the State of Connecticut would have to comply with regulations.

Through you, Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Representative Winkler.

REP. WINKLER: (41ST)

Thank you, Mr. Speaker. I just would like to voice my concern and know whether or not we are leasing to the Mohegan Tribe. I do know they were looking to establish beds down in our area in Long Island Sound. And it was a great concern because the method that they were using was causing a problem for boats, boaters. So I think I would like to know that answer. And if they are, I'd like to know the method that they're using.

Thank you, Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Will you remark further on the bill as amended?

Representative Widlitz.

REP. WIDLITZ: (98th)

Thank you, Mr. Speaker. Through you, Mr. Speaker, to the proponent of the question. I would be happy to look into that with her and pursue that further. Thank you.

DEPUTY SPEAKER HYSLOP:

Will you remark further on the bill as amended?

Will you remark further on the bill as amended?

Representative Chapin.

REP. CHAPIN: (67th)

Thank you, Mr. Speaker. Very simply, to augment the comments of the esteemed Chairwoman of the

Environment Committee. Good bill. Ought to pass. More bills, Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Will you remark further on the bill as amended?
Will you remark further on the bill as amended? If not, staff and guests to the well of the House. The machine will be opened.

THE CLERK:

The House of Representatives is voting by Roll Call. Members to the Chamber. The House is voting by Roll Call. Members to the Chamber please.

SPEAKER LYONS:

Have all members voted? If all members have voted, please check the machine. Make sure your vote is properly recorded. The machine will be locked and the Clerk will take a tally.

The Clerk will announce the tally.

THE CLERK:

SB 1018, as amended by Senate "A" and House Amendment Schedule "A",

Total number voting 148;

Necessary for passage, 75;

Those voting Yea, 147;

Those voting Nay, 1;

Absent, not voting, 2.

DEPUTY SPEAKER HYSLOP:

The bill as amended passes, in concurrence with the Senate.

Representative Godfrey.

REP. GODFREY:

(110th)

Mr. Speaker, I move for the immediate transmittal to the Senate of all items acted upon today still needing action by that body.

DEPUTY SPEAKER HYSLOP:

The motion is for immediate transmittal to the Senate. Seeing no objection, so ordered.

Clerk, please call Calendar 274.

THE CLERK:

On Page 26, Calendar 274, HB No. 6683, An Act concerning myofascial trigger point therapy of animals. As amended by House Amendment Schedule "A" and Senate Amendment Schedule "A". Favorable report of the Committee on Environment.

DEPUTY SPEAKER HYSLOP:

Representative Wilber.

REP. WILBER:

(63rd)

Mr. Speaker, I move the acceptance of the Joint Committee's favorable report and passage of the bill as amended by the Senate.

DEPUTY SPEAKER HYSLOP:

**JOINT
STANDING
COMMITTEE
HEARINGS**

ENVIRONMENT

PART 7

1963-2255

2003

PRESIDING CHAIRMEN:

PRESIDING CHAIRMEN: Senator Williams

MEMBERS PRESENT:

SENATORS: Handley, McKinney, Cook

REPRESENTATIVES: Chapin, Bernhard, Caruso,
Collins, Davis, Fontana,
Giuliano, Jarmoc, Kalinowski,
Lewis, Widlitz, Megna,
Moukawsher, Mushinsky, Roy,
Sharkey, Urban, Stillman,
Willis, Wilber

SENATOR WILLIAMS: If folks could please take their seats, were going to reconvene the public hearing of the Environment Committee. The first person we'll hear from is Attorney General Blumenthal, can we have the door in the back closed please, and will folks please take their seats.

Attorney General Blumenthal will be the first person to address this Committee. Everyone else take your seat or else leave the room at this time. And could we have the door in the back closed so that we can get our public hearing under way we have a large number of individuals who have signed up and we hope to try and get to all of them in a reasonable amount of time.

The first hour that is set aside is for legislators and agency heads and the first person to testify is Attorney General Richard Blumenthal.

ATTORNEY GENERAL BLUMENTHAL: Good morning Mr. Chairman, Madame Chairwoman, members of the Committee. I'm pleased to be with you today in support of three measures and I have submitted testimony on each of them, I won't read the testimony but simply to summarize.

First on HB6681, AN ACT CONCERNING THE PROTECTION OF WATERSHED LANDS. This legislation is

SB1018
SB1158

essentially designed to safeguard one of our most precious resources, the land that has protected and should be protected in the future.

Our water supplies are at stake and all of our habitat and other precious resources hang in the balance.

The takings law permits the State to exercise its police powers to extend this protection. This land really is a public trust because of the way it was acquired and the purpose that it was acquired for.

And I believe that we can successfully defeat any attempt to challenge this legislation on constitutional grounds on the claim that it is somehow a taking which it is not.

And so I think that there are ways to write this legislation, that will make it absolutely impervious to any such challenge. And we can provide to the Committee, case law in support of that proposition we've cited a case in our brief, Bridgeport Hydraulic Company versus the Counsel on water company lands as one example of the kind of case law that would protect and secure this legislation.

But I think for all the reasons that this Committee is so well aware, this kind of measure is absolutely critical.

I'd also like to support SB1018, AN ACT CONCERNING THE PROTECTION OF LONG ISLAND SOUND. The purpose of this legislation is really to clarify some of the provisions of the current law and add some additional protections.

The central point that needs to be clarified is that all of the cables and pipelines that have been proposed for Long Island Sound should be considered together, they're cumulative affect ought to be what is relevant under the law rather than reviewing them singly and separately.

Which is unfortunately, what some of our agencies have done in the past and we ought to take a step

toward declaring and designating certain parts of Long Island Sound seabed as marine parkland.

Much as we now protect state parks and even national parks as protected areas against development.

Similarly in these protected conservation areas there are large and very precious irreplaceable natural resources with impacts not just in that area but throughout the Sound that deserve protection, against development such as cable or pipelines and we ought to take a step in that direction by specifically providing authority in that area.

Finally in support of SB1158, AN ACT CONCERNING THE MORATORIUM ON PROJECTS ON LONG ISLAND SOUND.

This Bill rightly extends the moratorium for another year so that the Long Island Sound Task Force will have necessary and appropriate time to develop its recommendations.

The Sound is in continuing peril. The General Assembly wisely adopted a moratorium on State Agency consideration in a final decision making of all Long Island Sound projects.

The number of those continuing proposals from Branford to New Haven to Norwalk are very powerfully for a continuing moratorium and I urge the legislature to adopt it.

Thank you.

SEN. WILLIAMS: Thank you Attorney General Blumenthal. And thank you for your analysis on the protection of watershed lands, because as you know, there is a fair amount of discussion, over that and the issue of taking.

And it's important to hear you and your office weigh in on that, in favor of the Bill and also thank you for your input into the Long Island Sound protection legislation that is before this Committee.

You had proposed similar steps, last year and again this year. And we appreciate your help in that regard.

Are there questions?

REP. WIDLITZ: Thank you Chairman Williams. Good morning, I see in your testimony you refer to the Thimble Islands having already been identified as worthy of a marine park.

SB 1018

What kinds of restrictions would that impose on the people that live on the Thimble Islands, if we were to do something like that?

I understand that there is an application that's been held back because of the current moratorium for an electric cable out to one of the islands.

ATTORNEY GENERAL BLUMENTHAL: There would be ways to designate the Thimble Islands or any other area as a park. Much as the federal government does now by making an exception for people who live there, that is for activities or very modest changes and existing structures and so forth, means of transportation, which may be necessary for the Thimble Islands and so forth, but without expanding the facilities that are there already in any substantial way.

And in some of our national parks, obviously people have campsites or even homes that they're allowed to continue to have, and to live in, sometimes for a certain period of time. Sometimes in perpetuity, so I think there could be a combination for people who live there.

REP. WIDLITZ: Thank you very much. I'd be very interested in pursuing that, thank you.

ATTORNEY GENERAL BLUMENTHAL: Thank you.

SEN. WILLIAMS: Thank you are there other questions? Thank you very much.

ATTORNEY GENERAL BLUMENTHAL: Thank you.

SEN. WILLIAMS: Next from the Department of Environmental Protection is Commissioner Jane Stahl.

JANE STAHL: Good morning Senator Williams, Representative Widlitz, members of the Committee.

It is once again, a pleasure to be with you today and I once again bring the Commissioners apologies, he was conflicted with a meeting with the heads of his parallel resource agencies in the region to deal with an issue of concern to many of us or he would have been here himself.

SB1032

SB1157

We've presented testimony on three Bills. Let me give you the thumbnail of those and then be available to respond to any questions that you might have.

First, I'd like to comment briefly on SB1018, AN ACT CONCERNING THE PROTECTION OF LONG ISLAND SOUND.

I thought it would be ridiculous for there to be an act concerning the protection of Long Island Sound that we didn't comment on so here we are.

But I really only have two things that I would point out in with this particular Bill.

One is that, as previously referenced, there is under, -- developed under your legislation, last year a task force that is working on many of these issues that are touched on in this Bill.

It is a broad stakeholder group involved working diligently towards the June 3rd deadline and I would just suggest that there be enough openness in this legislative process to consider what that task force is doing and might come up with.

I turn in particular regard to Subsection C of Section four where there's a discussion of the host payment, I believe is the turner phrase activities on submerged lands.

There is a sub group on the task force that is

looking very broadly at the concept of submerged lands leasing and I think that might be a very valuable report in broadening potentially the components of this section.

The other area that I would point out in this legislation is Section seven where the Bill proposed is two modify the States structures in dredging statutes such that a hearing would be mandatory if petitioned for a project that has a cost of one million dollars or more. A

And I would just bring to your attention the fact that many projects other than the gas pipelines and other energy utility projects that were the focal point of this legislation as a whole would be captured by that dollar figure.

It doesn't take much when you're conducting shoreline in water work to reach that cost level. So there might be a broader universe of projects that are brought within the scope of this mandatory hearing, then was potentially intended.

And of course, our concern -- among our concerns is that as we broaden that universe we reach a financial resource impact that becomes difficult for the department to assume.

The next Bill that I would like to touch on is SB1032, AN ACT CONCERNING WATER QUALITY PROJECTS.

And what we would like to offer our support here, this Bill, as you know would remove the sun setting provision for the grant component of our clean water front projects.

We have a history of tremendous success in our clean water front fund projects, largely because of the combination of grants and loans that we've made available to our municipalities for the improvement of these facilities.

When we think it would be worth our while -- all of our whiles, to continue it with this very successful approach of combination grants and loans being available.

And the next Bill that I would like to speak to SB1157, AN ACT CONCERNING MINOR REVISIONS TO THE ENVIRONMENTAL STATUTES.

Unlike my prior comment, here unfortunately I have to raise our objection to Sections Ten of this Bill which would the affect of exempting button celled batteries from last years landmark legislation addressing mercury reduction.

This continues to be one of the priorities for the State and while button cells look real small and might have a little bit individually when we talk about incremental and cumulative impacts, this is the kind of thing that we really need to be considering. Every little bit does in fact make a difference, and when we're talking about something as toxic and offensive to the environment in human health as mercury, we cant be excluding sources like this.

So we would urge that that not go forward. And with that, I'll -- and I think I've given you the extent of our concerns and interests but I would happy to answer any questions that you have.

REP. WIDLITZ: Thank you Chairman Williams, good morning Jane. Thank you for coming this morning. Your comments about the Section seven of the Long Island Sound Bill, after going over that, we're trying to come up with a way to reasonably allow public demand for a public hearing on these dock projects.

SB1018

And I understand from information, I had requested, from the department, that it takes about forty days of -- on the average of a staff persons time to prepare for one of these hearings, is that accurate?

JANE STAHL: If you got the information from my staff, than absolutely it's accurate. (laughter) It wouldn't surprise me though because between the procedural maneuvering and the very specific procedural requirements involved, and the dotting of the I and crossing the T's of both direct testimony review of technical information.

It's processing the evaluation of conflicting information or contrary information or additional information intervening parties and the like, preparation for both direct testimony and cross-examination.

It could accumulate to that kind of number.

REP. WIDLITZ: And what kind of criteria does the department use for when they receive a request for a public hearing. How do they evaluate that and what criteria?

JANE STAHL: Well as you know under the structures and dredging statutes, right now, there is no requirement and there are no written criteria for a conduct of a public hearing. So what we look to are the other kinds of statutes, the other statutes that we have with regards to environmental protection and the reasons to open things to public hearing.

So we would look to really the scope of the public interest, the extent of the public interest, the complexity of the issues and our ability to gain additional insights through public input. And one's of our -- you know what can become a compelling factor.

We also look to other opportunities for public hearing. For example, many of our permits are just one in a chain of significant other regulatory activities.

So if there's been significant public input or intervention, by other groups and other areas, for us to take, you know the equivalent of judicial notice or administrative notice, of what's already been put on the record. Under oath, by other people, will largely weigh that and see, if there is anything to be gained or if this would truly be duplicative or a repetitive endeavor.

So those are the kinds of -- you know weights and measures we would use.

REP. WIDLITZ: And just one more question, we just chose the million-dollar figure, trying to come up with some sort of a threshold that made sense, but I'm not even sure on the application thinking about it that there is a monetary value assigned to a project when you receive an application.

REP. WIDLITZ: And that's accurate, that is not something that we currently ask for in our application materials. Is there a suggestion that you might have to help us develop better criteria, a better threshold?

JANE STAHL: Well I think that you know, you get the -- off the cuff the two areas that I would look to are honing in on the definition of the activity that you think would require public input. I know, again the context of this Bill was really the energy projects, when you come right down to it.

And if that was the intent then to require a hearing, if it's a -- something akin to the definition that would require a siting council, a certain level of transmission line or energy output or the size or scope of that kind or project and define it along those lines.

Or a different dollar value would be the other way of looking at it. Again a million dollars, sounds like a lot, but when we're talking about waterfront improvement projects it could capture a lot more than might have been intended.

So we could up that dollar figure and we could get you some, you know, some different numbers if that's an area that you'd like to head towards.

REP. WIDLITZ: Okay and I promise this is the last question.

I am at your disposal, from what -- being a shoreline legislator I do receive copies of all of the permits that are issued and I'm getting just about one a day at this point. Just from my district.

I'm wondering if -- to allow people more input, we

would be better served looking at broadening the notification in some way so that more people get notified of pending projects so that they do -- right now, it's just the adjoining property owners.

I've thought about that and I don't really know how you would do that on a water body. The coastline is just so varied. But I appreciate your comments.

JANE STAHL: Here again is an area where we've both -- we both expanded and contracted our public notice requirements. All applications that go through the department are publicly noticed and the -- in an old-fashioned way we use newspapers and that may not be the best way to get information to people anymore.

So that's one of the things that we've looking at and thinking about in terms of just making all -- everything that's coming before the department web available or electronically available so that people who are interested can in fact just check every now and then and see what kind of activities we're reviewing.

We have as a prior iteration of budget cutting changes to statutes several years ago honed back the people and entities to whom we were responsible -- we the department were responsible for providing notice to which is how we got to adjacent property owners and municipal officials as opposed to a broader array of municipal commissions.

Part of what we've done in trying to reach that balance of just cost and real benefit of public notice as opposed to you know and just broad public notice was to require applicants to notice themselves, applications that they were going to be submitting to the department.

So there's that when we receive an application it's noticed by the applicant. When we are preparing to go to a tentative determination which is largely is a term of art.

It means that we've done enough review that we are

getting ready to make a decision. But we also have enough, -- we've called out enough of the misinformation or we've ratcheted back enough of the regulated activity, so it comes within the confines of something, that we would find acceptable, then we go to public notice with this tentative decision -- notice of tentative approval or denial or approval with modifications.

So there are different ways of looking at public notice. I think there are really two different issues though, Representative Widlitz.

I think that there are ways of improving our public notice and again I'd point to web availability and electronic availability of those things.

It doesn't necessarily address the question of how people then comment on those applications to the department. Now whether it would be satisfactory to have that same web enabling and you know, once someone sees something that they're interested in just writing in a comment without it taking on the huge burden that's really associated with a contested case public hearing, which is what we talk about when we have statutorily required public hearing.

There's got to be middle grounds there that's acceptable to the public at large, interested parties, municipal entities, you know other public interests groups and wouldn't really inflict big resource constraints on the department.

So we've really talked about a lot of different issues here, I think that what we need to break down is additional public input to the department's processes and how we go about getting there.

And we need to also talk about how to enable and yet control the public hearing process. So we can work on it in several different ways. We'd be happy to continue to work with you along those lines to address your concerns, public concerns generally and the department's resource issues.

SEN. WILLIAMS: Thank you Commissioner.

On that same section, Section 7, I think what's trying to be accomplished there is some clear avenue for a public hearing and there are two criteria.

It's not only the million dollars but also a petition signed by 25 or more persons and admittedly, it's not so difficult to get such a petition together.

But I think that is met to try and raise the bar somewhat so that we're not capturing every routine maintenance and non-controversial project.

And I believe that you were concerned about some of that in your testimony and it's not our intention to try and capture every single non-controversial project of that nature.

But it does occur to me from your testimony that perhaps the dollar value is not the right way to go. Certainly, there could be a \$750,000 project that results in significant harm and disruption to the environment.

And I think that's what we're probably most concerned about the potential disruption in adverse impact and the scope of that impact of a particular project.

So I don't know if in the future, not right now but if in the future you have any thoughts on how we might be able to draw a definition related more to impact that might be a better way to go.

And of course the other reason to have this language in here is because during the cross Sound cable business, there wasn't as we know, a public hearing held on that and Commissioner Rocque said at the time, well there is no specific language requiring such a hearing.

So that really is the purpose of this, so that we do provide clear guidance for the department and an avenue for folks to comment on such significant projects. Further questions for the Commissioner?

SEN. WILLIAMS: Dan Lynch to be followed by Senator Nickerson.

DAN LYNCH: Good morning Chairman Widlitz and Chairman Williams and members of the Environment Committee.

My name is Dan Lynch and I am a member of the Connecticut Siting Council. I am here this morning substituting for our chairman and vice chairman who both had other commitments this morning and could not be here.

The other members of the council took a straw vote as to was actually going to represent us this morning, and I have the short straw right here. (laughter)

I have two reasons for being here this morning. The first is to discuss three Bills that involve the Connecticut Siting Council.

The second is to let members of this Committee know that the Council has a new chairman, some new member, and a relatively new executive director. That's Derek Phelps sitting right here to my left. Mr. Phelps is doing an excellent job in this position and we on the Council hope to reintroduce ourselves to this Committee in the near future.

With regards to today's hearing, I am here to address three Bills that relate to the Connecticut Siting Council, these Bills are SB1158, SB1018, and HB6682.

The Council has submitted written testimony on these Bills and I would like to make a few brief comments.

The first Bill I wish to discuss is SB1158, extending the moratorium on Long Island Sound to two years.

Public Act on 02-65 established a moratorium of one year, that the Governor signed last year. During that time, the Institute for Sustainable Energy was to put together a task force and assess the projects being proposed for Long Island Sound and

make recommendations to the DEP and to the Connecticut Siting Council.

The Council through our representative on that task force has submitted suggestions and guidelines for the development of the recommendations for the Sound.

The Council believes that there is ample opportunity -- that there is ample evidence being presented to the task force and that the task force will meet its goals set forth by Public Act 02-95 of January 3, 2003.

This goal having been met, the Council feels that the moratorium should not be extended.

With regards to HB6682, this Bill changes the criteria for approving applications for a certificate by the Connecticut Siting Council. Clearly the Bill would have the affect of returning the criteria for approving applications to a standard that was in place prior to their passage of the Restructuring Act of Section 16-50p.

Such a change would work against the goals of the Restructuring Act and to provide a competitive market and environment for the utility industry.

The Council does not support this change and the deregulation in the deregulated market place.

Lastly, SB1018, which relates to -- as it refers to the Council as changing the Council's ability to change alternative routes. The Council believes that we already have that ability to require alternatives to an application being presented to the Council.

Our guidelines for submitting an application spell that out very clearly, and a few submittals that we received that there is no proposed alternative.

The Council through a public hearing and a field review believes that we have the abilities to suggest variations or alternative routes to the applicant.

On this basis, we believe the Council already has the ability and we do not feel that there is a need to have this provision within the Bill.

Thank you very much for your time and Mr. Phelps and I would be open for any questions.

SEN. WILLIAMS: Chairman Widlitz.

REP. WIDLITZ: Thank you very much for your testimony. Would you explain the difference between public need and public benefit and what those apply to as far as overhead and underground and then how under Sound might be different from both of those, if you think they are.

DAN LYNCH: I don't think I'm going to -- I'm going to refer that to Mr. Phelps, he has a better understanding of how our -- this would work.

DAVID PHELPS: Madam Chair, good morning. With regard to the question of how in need is different is delineated from benefit. That issue is tied very closely to the restructuring legislation of 1998. Where upon the industry, let's say, the electric utility industry was -- prior to 1998 restructuring, vertically integrated.

And the criteria upon which the Council is expected to render an affirmative decision or only criteria by which the Council was expected to decide in favor of, an application was indeed when need was demonstrated.

That is the utility company were to approach the Siting Council and put forward evidence that an area is constrained, such as Southwestern Connecticut, where we know there is a bottleneck.

And in the interest of providing electricity under any circumstances, without regard to economic pricing, they were required by the process to demonstrate that, it was necessary, merely, for the purposes of, delivering electricity, keeping the lights on.

Subsequent to 1998s restructuring, the criteria for approving an application is expanded in order to allow for the Council to conclude that there was a public benefit to be had in the application, such that the generation proposed or that transmission line proposed would work towards providing a competitive marketplace.

Introducing competitive market forces into the industry and providing for the most economically priced electricity for rate payers so that the Council was no longer required to merely determine that it was necessary but rather that there would be a benefit to the ratepayers, to the consumers.

Do you have anything to add to that?

REP. WIDLITZ: The standard is different for an overhead line as opposed to an underground line is that correct?

DAVID PHELPS: There's a -- that's not exactly right. There is a requirement that the project be deemed approved.

The Council will explore the necessary appropriateness in any manner, shape or form. Whether it's appropriate to approve it and then work towards the question of how best to mitigate adverse environmental affect.

And as the Council deliberates on the queiston of how best to do that, how the project should be built, it will then examine the manner by which it should be developed and sited.

SEN. WILLIAMS: I have a couple of quick questions. In terms of the moratorium, I mean this was basically a policy decision made by the legislature and we have yet to see the report and we don't know what that final outcome will be. We don't know whether that will arrive in time, to influence what we do here this particular Session.

So that's -- you know I understand that your job is to carry out your responsibilities as defined by the Legislature. We are the policy making board

SB 1158

here.

And then we have faith that you will carry out your responsibilities according to the policy that this Legislature sets for the State.

So I think it is an open question as to whether the moratorium another year of a moratorium will be needed but I don't think we have all the answers there to preclude us from considering this.

I think it's much too early to assert that there would be no value gained in extending the moratorium.

Then as to SB1018, we heard many concerns about there being some confusion as to whether the Siting Council could address the cumulative affects of projects or whether it had to examine each project in isolation.

And this legislation among other things clarifies from a policy point of view, that the cumulative affect is to be taken into consideration as well as feasible and prudent alternatives. These are policy decisions that are properly before the Legislature and their properly made by the Legislature.

So I think that it would be premature for the Siting Council to say that there would be no value in extending a moratorium.

SB1158

And I don't believe it's correct for the Siting Council to be suggesting to this policy making body here at the Legislature that a clarification is unnecessary as to the cumulative affect of projects and to the examination of other feasible and prudent alternatives.

DAVID PHELPS: Thank you Senator and certainly I respect your points there and there points that we really don't quarrel with.

First however the issue of extending a moratorium and the way in which we arrive at our view in the written testimony that you have before you is just

monitor what's said, we look at the testimony afterwards and there are many other folks have meetings on other Committees and they have to come in and out.

So just keep that in mind too, that folks do keep their ear to what's going on here even when there not necessarily in the room. Thank you.\

JEAN LEVECCHIA: Good afternoon, thank you for this opportunity to comment today on rasied SB1158, SB1018 and HB6682 before the Committee.

My name is Jean LaVecchia and I'm the Vice President of Environmental Services and Safety and Northeast Utilities Service Company which provides environmental management and regulatory support to the Connecticut Light and Power Compnay, CL&P and Yankee Gas Services Company.

With me today our attorney Beth Barton whose representing CL&P on the Legislative Task Force and Raul Debrigard an environmental scientist. They will be able to provide detailed information on questions, should you have them.

Our primary concern is that fact that the subjects of all three of these proposed Bills are currently under consideration by the Legislative Task Force, created by Public Act 02-95, including a submerged land leasing program, cumulative environmental impact assessments, the comparison of project alternatives to meet a defined need and the replacemtn of the public benefit standard with a public need standard.

As you know, the purpose of the task force is to develop a comprehensive environmental assessment and plan under the direction of the Institute for Sustainable Energy.

Interested parties have been convened to assess, evaluate and make recommendations to protect the natural resources of Long Island Sound.

We believe that it would be prudent to wait until June for the final report from the Task Force and

in this State that could get away with that. Its past time to make it a water company.

SEN. -----A---: Are there questions? Thanks very much.
Curt Johnson to be followed by Paul McCary.

CURT JOHNSON: Good afternoon, my name is Curt Johnson and I'm the senior staff attorney for Connecticut Fund for the Environment.

I've submitted written testimony on SB1157, and the Long Island Sound Bills, HB6682 and SB1018, but for these few minutes I want to talk about raised HB6681 which Connecticut Fund for the Environment and the entire Endangered Lands Coalition strongly supports.

One thing that's submitted with Herb Rosenthals testimony is the entire size the coalition, which also includes about 45 civic organizations.

I just want to talk about water company land for a moment and as a precious and important natural resource, I want to also talk about the importance of this land for the protecting quality. There's been insinuations that this is not about protecting water quality and nothing could be further from the truth.

In my testimony I have an attachment which was held at a public hearing, it was the scientific basis for improving and strengthening the class two land protections. You went ahead and acted on that and you acted on it I'd like to believe because of the fact that this land is very important for protecting water quality. It's our first barrier, it's been a long standing process and it is something that's extremely important.

Eighteen reservoirs have been abandoned over a little more than a decade. We have no state water supply plan. We suffered a drought, we need the widest inventory of water supplies. It sounds like we're in agreement on this. What this Bill merely does is that it allows water companies to sell that land if the reservoirs (inaudible) but sell it subject to a conservation easement, so that the

mile. It was taken by the Greenwich Water Company through the threat of eminent domain. In subsequent years my parents gave 56 acres of their land to the Nature Conservancy for its maiden land acquisition known as the Mianus Gorge Preserve.

The idea that Kelga, Aquarion Corporation, the current owner of that former land of ours, might be able to use land acquired under such unequal and adversarial conditions --

(Gap in testimony, changing tape from 2B too 3A)

CHERYL DUNSON: -- development profits for current shareholders is manifestly unjust.

Since the Reservoir lands were acquired using the sovereign powers of the State and because that sovereign power was exercised for a public good to it, a public water supply then the State has every right and an obligation to all of its citizens to use its power on the disposition of the land so acquired to achieve the highest public purpose.

And he urges you to vote in support of this bill and so does the League of Women Voters of Connecticut. Thank you.

SEN. WILLIAMS: Thank you very much. Are there questions, thank you. Grant Westerson.

GRANT WESTERSON: Madam Chairman, Mr. Chairman, good afternoon, members of the Committee.

I gave you some testimony on SB1158, the moratorium Bill, the points I'd like to make on that are very short and very succinct and I'd like to make similarly brief comment about SB1018.

We talked with this Committee, last year, when the underlying moratorium was being written. And we were given pretty stringent assurance that it was in reaction to the Cross Sound Cables, and other projects of that size.

What came out of it was virtually a ban on construction projects in Connecticut that had

anything to do with water. That's the wayt DEP reviewed it and that's the impact on our industry.

Project applications that were in the pipeline virtuyally halted. Some of the small islands off the coast, utilities cannot be extended out to buildings that are being constructed. Both in the East and the West and in some cases we've been led to believe that you cant even do a river croosing with a cable now under the river because it would be considered an encroacyhment on this moratorium.

Whether the moratorium is good or not, that's a personal opinion and I'm certainly not going to voice that now, but I think it owudl be better if it were clarified along its original intent that, in trust state projects are not necessarily to come under its moratorium affect.

Interstate projects were certainly the intent, in fact if that could be reviewed, we'd certainly appreciate that.

The other Bill, protection of Long Isnald Sound, Section 7 at the end of htat Bill was reflected on by Commissioner Stahl, and I think that two points that trigger a public hearing should be looked at with maybe a little sharper pencil. The million dollar floor over project, well a million dollars is still a heck of a lot of money to me, to some people and some projects it really isn't that big and that should perhaps be increased.

SB 1018

But even more so, the 25 signatures is today with the public hearing proliferation, 25 signatures is a joke. Give me a couple days and I'll get 25 signatures to do away with mom and apple pie. Its not effective it doesn't do what I think its intention was. Most of the signatores to petitions don't even show up vfor the hearings.

So I think that needs to be looked at with perhaps a little bit more stirngetn eye. And those are the point I'd like to make and I hope you take those into consideration.

SEN. WILLIAMS: Thank you, are there questions?

REP. CHAPIN: Good afternoon, thank you. I was wondering if you know what percentage of the waste stream as far as mercury goes that the button cell batteries make up.

JOHN GURLEY: I don't know exactly as a percentage of the waste stream, other than to know that taking in total, they represent a very significant source of mercury. Hearing aide batteries, wristwatch batteris, they just get thrown away and put into our incinerators.

Its not so much of a percentage that we have to think about, we have to think about how little mercury it takes to do a tremendous amount of damage. The Mercury Bill of last session was an effort to rid mercury from the waste stream completely, in a timely orderly fashion and this just subverts that.

Whats to sop any other ndustry now to come in legislatively and ask for an exemption when there is an exemption provision already in the Bill?

REP. CARUSO: John, whose proposing that, do you know?

JOHN GURLEY: I have no idea, I wish I knew.

REP. CARUSO: Some rascal trying to sneak that in.

JOHN GURLEY: Sounds like it, but it belies the title of the Bill, minor --

REP. CARUSO: Hard to believe that theres rascals up there.

JOHN GURLEY: I tell ya, its shocking Chris.

REP. CARUSO: Okay John, thank you very much.

JOHN GURLEY: Thank you.

REP. CARUSO: The next speaker is Rober Earley followed by R. Blair Murphy.

ROBERT EARLEY: Good afternoon members of the Environemtn Commtite. My name is Rob Earley, and

SB1158
HB 6682
SB 1018

I'm an attorney who works for the Connecticut Business and Industry Association.

CBIA is comprised of 10,000 member companies. Some of them large but the majority of them are small, less than 50 employees.

I'm also a member of the States Energy Conservation Management Board. I have provided the Committee with written comments, I won't waste its time. I will summarize my remarks.

I'm here today to testify in opposition to three Bills. Raised SB1158, raised HB6682 and raised SB1018.

CBIA opposes raised SB1158, because it feels the development of a 21st century infrastructure for the delivery of gas and electricity is critical to our economy.

Energy literally fuels our economic growth. Each year our State uses more and more natural gas and electricity and we need to be able to have an infrastructure that can deliver to consumers so we can have stable and reliable energy.

Moreover we believe, that part of a comprehensive energy plan that includes upgrades to our transmission siting adequate generation, a vibrant competitive marketplace, conservation and load management efforts will solve most of the States energy problems.

The moratorium as suggested, in this Bill would prevent the ability to develop that important infrastructure.

And lastly, the other two Bills that we oppose, raised HB6682 and raised SB1018, we oppose on the same basis of many people who have come today to testify do as well.

One of the concerns is that the criteria for siting projects as specifically amended in 9828 would be undermined and the second of course is that the task force that is currently working on



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**TESTIMONY OF AUDUBON CONNECTICUT
SANDY BRESLIN, DIRECTOR OF GOVERNMENTAL AFFAIRS**

**ENVIRONMENT COMMITTEE PUBLIC HEARING
MARCH 28, 2003**

SB 1018
SB 1158
HB 6682
SB 1032

Audubon Connecticut, a part of the National Audubon Society with more than 16,000 members in the state, works to protect birds, other wildlife and their habitats through education, research, conservation and legislative advocacy.

LEGISLATION PERTAINING TO LONG ISLAND SOUND

Audubon Connecticut would like to take this opportunity to thank the Committee for the dedication its members have shown to Long Island Sound during the past year. Audubon Connecticut and National Audubon Society have long been involved in Long Island Sound issues. Audubon sponsored two rounds of Citizens Hearings designed to involve hundreds individuals and organizations in efforts to restore and protect the Sound. The most recent round of hearings was held during the summer of 2000 in cooperation with Save the Sound, Inc. (STS) and the Regional Plan Association. Copies of the final report of these hearings, entitled *Listen to the Sound 2000: A citizen's Agenda for the Long Island Sound* were provided to all of Connecticut's state Senators and Representatives in 2001. The first round of citizen hearings was held in 1990, and helped shape the final *Comprehensive Conservation and Management Plan for Long Island Sound*, (EPA, 1992).

Audubon's Important Bird Areas program has already identified 8 coastal sites as Important Bird Areas in Connecticut. These 8 sites are part of a global network of areas critical for the long-term conservation of sensitive bird species. Pipeline and cable crossings have the potential to negatively impact these and other important habitats in and along the Sound, and should be carefully evaluated as to need and potential environmental impacts before such projects are allowed to proceed. Thank you for the opportunity to testify today. Specific comments are included below.

RAISED BILL 1018 AN ACT CONCERNING THE PROTECTION OF LONG ISLAND SOUND

Audubon Connecticut supports the Committee's effort to address many of the most onerous practices and loopholes that have come to light in the past year regarding regulation of activities in Long Island Sound.

We echo the comments of Save the Sound that:

Line 10-15: the Department of Environmental Protection and the Department of Agriculture, Division of Aquaculture be parties to any proceeding involving the installation of utility infrastructure in Long Island Sound. The input given by the Departments are cursory at this stage in the application. It is only after DEP receives an application that an in-depth evaluation of resource impacts is completed. The requirement that these agencies join the proceeding at the Siting Council phase will help everyone involved arrive at an accurate determination of potential impacts.

Line 208-218: Expand the fee proposed to be charged by the Commissioner of Aquaculture to all LIS public trust lands crossed. While it is very important that Aquaculture development in Connecticut is not hindered by cross Long Island Sound utility infrastructure, it is equally important that a message be sent that those lands held in public trust for the citizens of our state cannot be used freely by private, non-water dependent companies. Audubon Connecticut supports STS's proposal to analyze the Submerged Lands Leasing Program. Such a program should not affect the applicant's mitigation requirements under required permits. It should serve as an additional requirement to the taking of a public trust. Funds would benefit restoration projects and result in a monies to fix any unforeseen detriment that, for whatever reason, could not be retrieved from the owner of the line.

Line 111: Should be revised to "A public [benefit] need for the facility."; See comments below on Raised Bill No. 6682.

Line 118: Should be revised to: "including a specification of every [single] adverse [and beneficial] effect that."

RAISED BILL 1158 AN ACT CONCERNING THE MORATORIUM ON PROJECTS IN LONG ISLAND SOUND

Audubon Connecticut supports extending the current moratorium on energy transmission projects in the Sound if only to provide legislators with adequate time to receive, digest and act on the recommendations of the LIS Task Force. Any other reasons or objectives for extending the moratorium should be spelled out clearly in the extension language.

RAISED BILL 6682 AN ACT CONCERNING THE SITING COUNCIL REVIEW OF UNDERGROUND OR UNDERWATER TRANSMISSION LINES

Audubon Connecticut strongly supports the Committee's efforts to protect the habitat that lies in and under Long Island Sound. Revising the test to one of public need rather than benefit is a good move. However, the continued inclusion of market competition as a benchmark seems at odds with this approach. Audubon Connecticut suggests it be removed as a consideration. Providing a competitive market is key to the success of



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Testimony of the Connecticut Siting Council**Environment Committee****RAISED SB 1018: AAC the Protection of Long Island Sound**

The Connecticut Siting Council (Council) wishes to respectfully submit the following remarks with regard to RAISED SB 1018: AAC the Protection of Long Island Sound.

Sec. 2. Subsection (a) of section 16-50p of the general statutes is repealed and the following is substituted in lieu thereof (Effective from passage):

This section provides, in part, that the Council shall not grant a certificate, either as proposed or as modified by the council, unless it shall find and determine: (1) A public need for the facility and the basis of the need taking into consideration other feasible and prudent alternatives provided to the council by a party or intervenor that address the same public need; (2) the nature of the probable environmental impact of the facility alone and cumulatively with other facilities or proposed facilities provided to the council by a party or intervenor, et. seq.

The Council wishes to advise the Committee that the aims of this proposal are currently provided for through General Statutes § 16-50l (a), which states, in part, that applications need to contain (H) "justification for adoption of the site selected, including comparison with alternative sites;"

The Council's application guide further expounds upon this provision by requiring, under section VI. I. "A justification for adoption of the route selected including a comparison with alternative routes which are environmentally, technically, and economically practicable. For electric transmission lines, provide a justification of overhead portions, if any, including comparative cost studies and a comparative analysis of effects described in section K for undergrounding. Include enough information for a complete comparison between the proposed route and any alternative route contemplated."

It is on the basis of these existing requirements that the Council views this proposed legislation as unnecessary.

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*TESTIMONY OF
ATTORNEY GENERAL RICHARD BLUMENTHAL
BEFORE THE ENVIRONMENT COMMITTEE
MARCH 28, 2003*

I appreciate the opportunity to speak in support of Senate Bill 1018, An Act Concerning the Protection of Long Island Sound.

Long Island Sound is one of Connecticut's most precious natural resources -- a national treasure that provides recreational, economic and environmental benefits. Despite its expanse, it is a very fragile ecosystem.

The cumulative impacts of industrial and other human activity over the last two hundred years have taken a fearful toll on the Sound and our coastal and aquatic resources. All have been affected by private and commercial development. One result has been a massive loss of coastal wetlands, which feed and sustain our aquatic ecosystems. Runoff from industrial pollution and municipal sewage, agricultural fertilizers and sedimentation, and other byproducts of increased urban and suburban development, all have caused destruction of natural shellfish communities and severe damage to the rest of the marine ecosystem.

Given this continuing history of degradation and destruction, I have urged the Long Island Sound Task Force to recommend that certain areas of the Sound be clearly designated as marine park land, and protected against any and all seabed development. If these protected conservation areas are large and properly located, they can make a major contribution to restoring natural ecosystems and the Sound's health. In many areas of the Sound, such as New Haven Harbor, there are important and irreplaceable shellfish resources gravely at risk. Despite two centuries of growth, there exist a few relatively untouched areas retaining the variety of habitat that we must protect. Some areas, such as the Thimble Islands, have already been identified as worthy of a marine park. Many other areas of the Sound, especially along our coast, merit similar recognition, since they are critical to restoring and sustaining the Sound.

A plethora of proposed development projects affecting Long Island Sound -- including electric cables and natural gas pipelines -- have demonstrated the need for strengthening our laws to further protect the environment and shellfish beds from harm. Clarifying existing public policy obligations, Senate Bill 1018 will require the Connecticut Siting Council to take into consideration all feasible and prudent alternatives to an applicant's project, ensure that the Department of Agriculture is consulted by the Siting Council, require that shellfish lessees in good faith cultivate their shellfish beds, and mandate a Department of Environmental Protection hearing on any structure and dredging permit application involving a project in excess of \$1 million, if 25 people request such hearing.

Last year, this committee heard testimony about shellfish bed lessees who had received millions of dollars from multi-national companies so these companies could use their shellfish beds for cable and natural gas pipelines. The lessees also agreed not to oppose the project before the Connecticut Siting Council or any other state agency and to refrain from cultivating the shellfish beds in the area.

The State of Connecticut created these leases and franchises for the sole purpose of protecting, encouraging and regulating the state's shellfish resources. After decades of destruction, the leasehold system was created to rebuild a devastated industry and restore large areas of shellfishing grounds. This system has succeeded, after great investment of state time and taxpayer money. Agreements to stop cultivating the shellfish beds make a mockery of the state's commitment.

Senate Bill 1018 would require leaseholders to make good faith efforts to cultivate their leases, and bar any agreements to forego cultivation rights without approval from my office and the Department of Agriculture. As an interim step, I have already directed important changes to these agreements so that lessees cannot profit from using the beds other than for shellfishing. Articulating these concepts in state law will ensure a uniform policy, alterable only with approval from the General Assembly.

My experience in fighting the proposed Transenergie electric cable project demonstrated a need to clarify the law concerning Connecticut Siting Council review. In my challenge to the Siting Council's approval of the permit, a Superior Court judge ruled that the Connecticut Siting Council did not have to consider alternatives to the applicant's proposal.

Senate Bill 1018 would clarify in statute that the Connecticut Siting Council should first consider feasible and prudent alternatives that meet the same public need - such as increased electric supplies or access to natural gas distribution - but with less impact on the environment. Further Senate Bill 1018 would require that the Council clearly and explicitly consider and assess cumulative impacts from the proposed and completed projects, reviewing them together rather than singly and separately.

Finally, the Transenergie project required a structures and dredging permit from the Department of Environmental Protection. Incredibly, despite the enormous implications of the project and its potential significant impact on the environment, the Department did not hold a hearing nor was it required to do so. Senate Bill 1018 would require the DEP to hold a hearing on any structures and dredging permit where the project exceeds \$1 million, if 25 or more people request such hearing.

I urge the committee's favorable consideration of Senate Bill 1018.



STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION



Public Hearing – March 28, 2003
Environment Committee

Testimony Submitted by Commissioner Arthur J. Rocque, Jr.
Department of Environmental Protection

Raised Senate Bill No. 1018
An Act Concerning the Protection of Long Island Sound

Thank you for the opportunity to present testimony regarding Raised Bill No. 1018. As you are aware, the Department of Environmental Protection has a profound commitment to protect and manage the resources of Long Island Sound. While we support the bill's intended protection of Long Island Sound, we are concerned about various aspects of the proposed bill.

Primarily, we would point out that several of the issues this bill touches upon are also elements of the Long Island Sound Task Force work being conducted pursuant to P.A. 02-95. We expect that the Task Force products will provide a more comprehensive approach to the issues and should be reviewed and evaluated prior to final legislative action. As a case in point, we are concerned with subsection (c) of section 4, which appears to set up a submerged lands leasing program for utility lines and "public use structures." As proposed in the bill, the placement of such facilities in "any grounds of Long Island Sound," not limited to leased or designated shellfish areas, would entail the payment of an "annual host payment fee" to the Department of Agriculture (DOA). While we conceptually support a leasing program for non-water dependent uses of submerged public trust land, we believe the present proposal is premature given that a subcommittee of the Task Force, with representation from DEP, DOA Aquaculture Division, utility companies, and environmental groups, is presently examining the specific question of submerged lands leasing for cables and pipelines. Please note that the Task Force report is scheduled to be completed on June 3, 2003.

In addition, several provisions of this bill indicate a need for further explanation. Sections 4 and 6 would require payment for the relocation of shellfish from leased beds in which a "utility line or public use structure" is located. No definition of "public use structure" is provided, and it is unclear whether it would include bridges, fishing piers, or other public facilities such as Long Wharf in New Haven or the State Pier in New London. It is also unclear what would take place in the event that alternative leased areas are not available, or not deemed suitable, for shellfish relocation.

Section 7 of the proposed bill proposes changes in the notice and hearing requirements of the DEP Structures and Dredging permitting program. In the context of the entire bill, the proposed changes appear to be designed to allow enhanced input on pipeline and cable projects. We would point out

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for the Committee's consideration that any additional process will necessarily add to the Department's cost and permit processing time. In addition, the proposed threshold of \$1 million for a mandatory hearing upon petition would not only capture those large pipeline or cable projects, but would encompass other smaller, less controversial projects such as marina expansions or highway bridge construction and maintenance. If the Committee wishes to require hearings on cross-Sound cables and pipeline projects, it could explicitly say so, or establish a significantly higher dollar threshold to capture only major infrastructure projects.

Thank you for the opportunity to present the DEP's views on this proposal. If you should require any additional information, please contact Tom Tyler, the DEP legislative liaison, at 424-3001.

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ENVIRONMENT COMMITTEE
TESTIMONY OF JEAN LAVECCHIA
ON BEHALF OF
NORTHEAST UTILITIES SYSTEMS
PROTECTION OF LONG ISLAND SOUND,
CT SITING COUNCIL LEGISLATION AND MORATORIUM ON
PROJECTS IN LONG ISLAND SOUND
MARCH 28, 2003

Senator Williams, Representative Widlitz and members of the
Environment Committee:

Thank you for the opportunity to comment today on Raised Senate
Bill No. 1018 (An Act Concerning the Protection of Long Island Sound),
Raised Senate Bill No. 1158 (An Act Concerning the Moratorium on
Projects in Long Island Sound), and Raised House Bill No. 6682 (An Act
Concerning the Siting Council Review of Underground or Underwater
Transmission Lines), which are before the Committee.

My name is Jean LaVecchia. I am the Vice President of Human
Resources, Safety and Environmental Services for Northeast Utilities
Service Company, which provides environmental management and
regulatory support for The Connecticut Light and Power Company (CL&P)
and Yankee Gas Services Company. With me today are Attorney Beth
Barton, who is representing CL&P on the Legislative Task Force that is
studying issues concerning Long Island Sound, and Raul Debrigard, an

direction of the Institute for Sustainable Energy, has done an extensive review and analysis of available information pertaining to Long Island Sound. The Task Force is thoroughly considering a variety of issues and proposing recommendations. We believe it would make sense to review the findings and recommendations of the Task Force before determining whether an extension to the moratorium is necessary. Should the Legislature then determine that additional review is needed, it would then be able to address how such further study would be funded and how long it would require.

Raised Senate Bill No. 1018 proposes several changes to how the Connecticut Siting Council renders a decision on a proposed facility, and also proposes ways to minimize impacts to Long Island Sound, in particular shellfish beds. Many of these same issues are undergoing an extensive review by the Legislative Task Force.

This bill would require the Siting Council to specifically address in its decision the "feasible and prudent alternatives" to the proposed facility. The Siting Council already has this authority under current law, which enables it to weigh alternatives brought forth during a proceeding. The proposed language requiring an analysis of alternatives is redundant and therefore unnecessary.

In addition, to assure a meaningful basis for the Siting Council to evaluate alternatives, the party or intervenor proposing additional

alternatives should be required to provide the Siting Council with environmental impact data equivalent to data an applicant is required to provide. NU proposes that any alternative considered in the Siting Council's determination must have successfully gone through the same public need or benefit determination and environmental assessment as that required for the proposed facility.

The bill also would require the Siting Council to consider the cumulative environmental impacts of "other facilities or proposed facilities" provided to it by a party or intervenor. Unless the bill were to focus only on known or existing projects, the standard created with this language would be unworkable and speculative.

NU has concerns about the creation and implementation of the shellfish area lease authorization in sections 4 and 5 of Raised Senate Bill No. 1018. NU urges that, prior to the lease of any lands for shellfish cultivation and harvesting on which there is utility infrastructure, a determination addressing safety considerations should be required. Further, NU notes that this bill emphasizes the importance of productive use of leased shellfish areas. NU recommends that the Legislature consider a requirement that any leaseholder of shellfish areas provide an annual report of their planting activity and production. The relationship between shellfish activities and other uses of the Sound is also currently among the issues before the Task Force.

Finally, this bill introduces the concept of a host fee only for certain uses of public trust lands. We understand the Task Force is currently considering the assessment of fees under a submerged lands leasing program. We urge the Committee to await the Task Force's final report. Further, if the state should enact such a program, NU believes the state should apply it to all uses of public trust lands and not single out utility and other "public use structures". Indeed, the argument for charging a fee for a private use of public trust lands is much stronger than that for charging a fee for public uses, including public utility uses. A public utility use, which is for the benefit of the public generally, is within the scope of public uses for which the state holds submerged lands in trust.

NU also believes that the bill should exempt existing utility infrastructure from a fee assessment. It would not be fair to impose these fees retroactively on such infrastructure. Further, we must recognize that any such fee would be an additional cost borne by Connecticut utility customers. These costs would need to be recovered in rates, and would be over and above property taxes NU already pays on our existing infrastructure. Even under an appropriate submerged lands leasing program, the host fee proposed in this bill is unrealistically high. For example, CL&P customers have contributed to the cost of a one-time,

25 year lease fee of \$2.5 Million associated with CL&P's and LIPA's cable that lays beneath NY waters.

In summary, this bill would in effect tax a public use facility, and the public as a whole, to subsidize a private industry. Any fees assessed and collected for the use of public trust lands should be fair and utilized for the benefit of the overall stewardship of Long Island Sound, not a private use or interest.

Finally, Raised House Bill No. 6682 proposes to change the way in which Sec. 16-50p currently identifies one of the findings made by the Siting Council. This bill proposes a determination of public need rather than public benefit. NU does not oppose this change, particularly since, when determining if there is a public need, the Siting Council now considers environmental impacts, reliability and the consistency of the proposed facility with the state's long range plan. NU would suggest, however, that if this language change were adopted, the last sentence defining public benefit should also be deleted from the proposed bill.

Thank you for your attention, and we look forward to working with the Committee and the Task Force toward the protection of Long Island Sound.

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TESTIMONY OF
ROBERT E. EARLEY
CONNECTICUT BUSINESS AND INDUSTRY ASSOCIATION
BEFORE THE
ENVIRONMENT COMMITTEE
MARCH 28, 2003

Good afternoon. My name is Robert E. Earley. I am a staff attorney, who works on energy issues for the Connecticut Business and Industry Association (CBIA). I am also a member of the state's energy conservation management board. CBIA represents over 10,000 companies in the state. Our membership includes many of the state's larger employers, but the vast majority are small businesses with fewer than 50 employees.

Thank you for this opportunity to comment on:

Raised Bill No. 1158 An Act Concerning The Moratorium On Projects In Long
Island Sound

Raised Bill No. 6682 An Act Concerning The Siting Council Review Of
Underground Or Underwater Transmission Lines

Raised Bill No. 1018 An Act Concerning The Protection Of Long Island Sound

Raised Bill No.1018 An Act Concerning The Protection Of Long Island Sound.

CBIA opposes this bill.

CBIA believes that good environmental policy does not have to be incompatible with good energy policy. We have been active members of the Energy Conservation and Load Management Board that has provided significant environmental and energy efficiency benefits to Connecticut. These bills seek to change the established balance for weighing transmission siting proposals in Connecticut. The current siting procedures were designed to consider many factors and further several public policy goals, including the development of competitive energy markets. The Long Island Sound Task Force has carefully examined the issues associated with the state's transmission siting process for months and will report its findings and recommendations in June. CBIA believes it is best to wait for the task force's report before disturbing current siting precedent.

Thank you for the opportunity to present testimony.