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Coastal management legislation balances environmental concerns with property rights

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In Connecticut's post-storms legislative world, most of the focus has been on how to make sure power outages like the ones the state suffered in August and October never happen again.

But for communities along the shoreline, where some buildings are still in disrepair, seawalls remain crumpled and some landscapes were altered permanently by Tropical Storm Irene, how quickly the lights come back on may be secondary when homes and businesses are flooded or even destroyed, and beachfront property is washed away.

Legislation to protect the shoreline from such ravages of future storms, as well as the compounding impact of sea level rise, has passed the General Assembly.

While it stops far short of a list of mandates, it does represent a sea-change -- so to speak -- in what the state considers necessary to manage the shoreline in light of a changing environment and, generally, more concern about it.

For the first time in Connecticut, sea level rise is specifically mentioned among the criteria for coastal planning, and it is to be considered in the revision later this year to the state's Plan of Conservation and Development.

"I think the fact that sea level rise is being mentioned in statute is an important first step," said Rep. James Albis, D-East Haven, whose community was especially hard-hit, and who has taken a leading role in shoreline issues, including chairing the recently created Shoreline Preservation Task Force.

The legislation takes another bold philosophical step in specifically calling for minimizing "shoreline armoring." In other words -- seawalls.

The case against seawalls

After Irene, local, state and federal officials repeatedly called for more seawalls to better protect shoreline property. At the same time, scientists largely warned against such efforts. Many shoreline geology experts noted that seawalls typically magnify wave action, causing "scouring," a digging out of areas beneath walls, which makes the waves even bigger, causing even more erosion. And they noted that sea level rise would make those waves bigger still.

The legislation spells out specific "feasible, less environmentally damaging alternatives" to classic shoreline armoring. Those listed include moving inhabited structures farther from the water, raising them, restoring or creating dunes and employing any of a number of techniques under the category of "living shorelines."

That could include tidal wetland vegetation, salt marsh restoration, sand fill and other types of natural means to disperse or absorb water. It's a concept supporters say has proven successful in the Chesapeake Bay and elsewhere.

Communities are not forced to approve such methods, but the legislation essentially enables them to if they so choose.

"It's a proactive offensive approach rather than the defense armoring," Albis said. "We want to make sure more people are aware of different options.

"We're really doing some revolutionary stuff here."

But it took a somewhat Herculean bipartisan effort to get to that point.

Several bills were incorporated into the final version; most notably two -- one from the House, one from the Senate -- that were about as polarizing as they come.

A Republican-backed bill was blasted by environmentalists who felt it would force communities to approve virtually all armoring proposals like seawalls. And environmentalists backed another that incensed more than a few legislators and others with this language:

"To encourage a fair and orderly legal process to foster strategic retreat of property ownership, over a period of several decades, for coastal lands that have a likelihood of being lost due to erosion and coastal lands that contain structures that are subject to repetitive damage."

Intense negotiations resulted in an almost entirely new bill with a first line that asserts "the rights of private property owners."

"I think it's a lot better bill in many regards," said Sen. Len Fasano, a Republican who not only represents East Haven, but also owns a house and a beach club there; the latter sustained serious damage in Irene. He had backed the Republican bill.

"This opens it up to whole new ways to protect the shoreline; it's kind of cool," said Fasano who admitted he was intrigued by some of the living shoreline techniques for his own property. "I'm definitely going take a look at it."

A compromise

Most credit Fasano and David Sutherland, director of government relations for the Connecticut office of the Nature Conservancy, with forging the compromise, and each man has nothing but accolades for the other now.

But Sutherland chose his words carefully and disputed that his group's goals may have fallen short. "Not at this point," he said. "We don't live in a pure ecological world. We live in a world with a lot of different factors we need to take into account.

"It was a compromise," he said. "The bill is an accurate reflection and a very appropriate bill for where we're all at right now."

Among its other critical points, the legislation redefines the "high tide line" as a "coastal jurisdiction line" that is more predictable than the actual tide line. The Department of Energy and Environmental Protection retains jurisdiction for structures on the water side of it. Municipalities oversee those on the land side.

In both cases, if an application for a flood or erosion control structure is denied, the legislation would now require DEEP or the local government to provide the applicant with less environmentally damaging alternatives to consider.

Under current law, seawall building is restricted to the replacement of existing ones and new ones around critical infrastructure and inhabited structures built before 1980. Those categories are expanded in the legislation to include inhabited structures built as recently as 1995 and cemeteries.

The bill also includes establishment of a pilot program to explore innovative approaches to coastal management, calls for a shoreline management study and authorizes academic institutions to develop science and engineering programs to support coastal management.

At this point there are no full-throated objections to the legislation. The Connecticut Conference of Municipalities had opposed earlier versions that it thought tied the hands of local government.

"It certainly has been modified, and we appreciate the efforts made," said Kachina Walsh-Weaver, CCM's senior legislative associate, who said that officially CCM does not support the legislation. "Our basic concerns with the bill is how it will play out over time."

The Connecticut Marine Trades Association, which represents about 300 marinas and boatyards, had also been concerned about earlier versions, and specifically the private property threat.

"I'm cautiously optimistic with changes that have been made," said Grant Westerson, the association president. "Am I in love with it? No. But enough changes have been made in the bill that we can deal with it."

Westerson and others noted that the new shoreline task force, as well as the recently created Long Island Sound Caucus, would provide opportunities to work on many thorny coastal management issues in a way that complements the legislation.

"This bill came out so fast," he said. "Why are we doing this now? We've got a task force that's been appointed. Let them do their job and see what comes out."

Which is exactly what Albis intends to do, eventually picking up the difficult issue of whether to continue to rebuild in flood-prone areas.

"While there is a lot of work to do, I'm happy that the task force has time to look at other solutions," he said. "The legislation provides a springboard."

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