Senator Len Fasano – Testimony H.B. 5128
Environment Committee
Wednesday, February 22, 2012
Room 1C of the LOB – 11:00AM

H.B. 5128: AN ACT CONCERNING CERTAIN REVISIONS TO THE COASTAL ZONE MANAGEMENT STATUTES

Good afternoon Chairmen Roy and Meyer, Ranking members Roraback and Chapin.

I am Senator Len Fasano from the 34th district, and I am testifying today in strong opposition to HB 5128, An Act Concerning Certain Revisions to the Coastal Zone Management Statutes.

The title of the bill is rather misleading. The changes proposed in the legislation are not simply "revisions", rather they are extraordinary and overreaching changes in the policy of this state regarding coastal management and the right to live on the shore. Or rather, the right of the state to STOP people from living on the shore.

The bill starts by amending the goals and policies of the Coastal Management Act to now "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."

There is already a legal process for such taking of land – eminent domain. I am not sure I would call it an "orderly" process after the abuses we have seen carried out under eminent domain in the name of progress, economic development, and increases to the property tax grand list. One only need go to New London, to the Fort Trumbull neighborhood, and look at the vacant land to see how government takings can go wrong. What was supposed to be Pfizer's world-wide campus, with all sorts of retail, residential and commercial developments surrounding it, now looks like a desolate urban wasteland. And one need only ask Suzette Kelo how "fair and orderly" she feels the legal process operated in forcing her to cede ownership of her home for a project that has gone nowhere.

With an already existing legal framework to take property for legitimate purposes, I suppose the addition to the CMA of this language is an attempt to make a taking for coastal management strategies a "legitimate" purpose. If stopping erosion satisfied the "public use" test for a lawful taking under eminent domain, then there is no need to include this language in the bill. But that is not the case. We are trying to create a new reason to take property from shoreline residents. With the introduction of this bill, the only "erosion" we should be worried about is that of the public trust in this body.

In addition to creating a new, unconstitutional basis to take private property, the bill attempts to codify rising sea levels – to the extent that we put in statute a "projection" of 2.4 inches per decade or at a rate determined by the Commissioner of DEEP to be in accordance with best available science. There is nothing in the bill that sets out the basis for this projection. Nor does it offer any other scientific possibility or opinion. It simply sets a baseline number that if not reached, will still be the basis for policy determinations in the state. That is, unless the Commissioner comes in with a greater number. I have a problem with putting into law what seems like an arbitrary number, an arbitrary number that can be set at a level for abuse to provide a rationale to take people's private homes and land.

Based on the proposal here to consider the rising sea levels as reason to take a private home, I am wondering why this proposal does not address the use of public funds into projects that will, according to proponents, soon be underwater. If this is to be the new standard, then we need to examine the use of state money for shoreline projects. Metronorth railroad, Tweed Airport, the Stadium and Arena at Harbor Yard, UConn's Avery Point campus, the list is endless. If this bill is to go forward, a prospect I adamantly oppose, then it needs to be fair and apply the same scrutiny to public projects that we are going to try and apply to private homes.

Finally, we are changing the standards for Coastal Site Plan reviews to include whether or not a property has been flooded previously and rebuilt. This is going to result in a regulatory taking of any property where permits will be denied based on flooding history. This greatly limits the ability of property owners to enjoy their land, to realize the full value of the waterfront property they have purchased.

I understand that there are those who do not want anyone to live on the shore. But there are far more who wish to live on the coast, which is why the market prices waterfront properties accordingly. People own the land. They live there. They paid a premium to do so. Their property taxes are assessed at a higher rate there. If the state wishes to create a program to buy shoreline land and return it to its natural state, then do that. The cost would be prohibitive. But to step outside the accepted constitutional rationale that justifies the taking of private property for a public purpose is an abuse that simply cannot go forward.