

2009 -- H 5336 SUBSTITUTE A AS AMENDED

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LC00514/SUB A
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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2009

A N A C T

RELATING TO WATER AND NAVIGATION - THE COASTAL RESOURCES
MANAGEMENT COUNCIL

Introduced By: Representative Peter F. Kilmartin

Date Introduced: February 05, 2009

Referred To: House Municipal Government

It is enacted by the General Assembly as follows:

1 SECTION 1. Legislative declaration. The spirit and intent of Article 1, Section 17 of the
2 Rhode Island Constitution declares:

3 SECTION 17. Fishery rights -- Shore privileges -- Preservation of natural resources. --
4 The people shall continue to enjoy and freely exercise all the rights of fishery, and the privileges
5 of the shore, to which they have been heretofore entitled under the charter and usages of this
6 state, including but not limited to fishing from the shore, the gathering of seaweed, leaving the
7 shore to swim in the sea and passage along the shore; and they shall be secure in their rights to the
8 use and enjoyment of the natural resources of the state with due regard for the preservation of
9 their values; and it shall be the duty of the general assembly to provide for the conservation of the
10 air, land, water, plant, animal, mineral and other natural resources of the state, and to adopt all
11 means necessary and proper by law to protect the natural environment of the people of the state
12 by providing adequate resource planning for the control and regulation of the use of the natural
13 resources of the state and for the preservation, regeneration and restoration of the natural
14 environment of the state.

15 SECTION 2. Section 46-23-6 of the General Laws in Chapter 46-23 entitled "Coastal
16 Resources Management Council" is hereby amended to read as follows:

17 **46-23-6. Powers and duties -- Rights-of-way.** -- In order to properly manage coastal
18 resources the council has the following powers and duties:

1 (1) *Planning and management.*

2 (i) The primary responsibility of the council shall be the continuing planning for and
3 management of the resources of the state's coastal region. The council shall be able to make any
4 studies of conditions, activities, or problems of the state's coastal region needed to carry out its
5 responsibilities.

6 (ii) The resources management process shall include the following basic phases:

7 (A) Identify all of the state's coastal resources, water, submerged land, air space, fin fish,
8 shellfish, minerals, physiographic features, and so forth.

9 (B) Evaluate these resources in terms of their quantity, quality, capability for use, and
10 other key characteristics.

11 (C) Determine the current and potential uses of each resource.

12 (D) Determine the current and potential problems of each resource.

13 (E) Formulate plans and programs for the management of each resource, identifying
14 permitted uses, locations, protection measures, and so forth.

15 (F) Carry out these resources management programs through implementing authority and
16 coordination of state, federal, local, and private activities.

17 (G) Formulation of standards where these do not exist, and reevaluation of existing
18 standards.

19 (H) To develop comprehensive programs for dredging in tidal waters and related
20 beneficial use, disposal, monitoring dewatering and transportation of dredge materials.

21 (I) To accept and administer loans and grants from the federal government and from
22 other sources, public or private, for the carrying out of any of its functions, which loans or grants
23 shall not be expended for other than the purposes for which provided.

24 (J) To encourage, participate in, or conduct studies, investigations, research, and
25 demonstrations relating to dredging, disposal of dredge materials and transportation thereof in the
26 tidal waters of the state as the coastal resources management council may deem advisable and
27 necessary for the discharge of its duties under this chapter.

28 (K) To collect and disseminate information relating to dredging, disposal of dredge
29 materials and transportation thereof within the tidal waters of the state.

30 (L) To work with the appropriate federal and state agencies to develop as provided for in
31 this chapter and in chapter 6.1 of this title, a comprehensive plan for dredging in tidal waters and
32 related beneficial use, disposal, monitoring dewatering and transportation of dredge materials.

33 (M) To apply for, accept and expend grants and bequests of funds, for the purpose of
34 carrying out the lawful responsibilities of the coastal resources management council.

1 (iii) An initial series of resources management activities shall be initiated through this
2 basic process, then each phase shall continuously be recycled and used to modify the council's
3 resources management programs and keep them current.

4 (iv) Planning and management programs shall be formulated in terms of the
5 characteristics and needs of each resource or group of related resources. However, all plans and
6 programs shall be developed around basic standards and criteria, including:

7 (A) The need and demand for various activities and their impact upon ecological
8 systems.

9 (B) The degree of compatibility of various activities.

10 (C) The capability of coastal resources to support various activities.

11 (D) Water quality standards set by the director of environmental management.

12 (E) Consideration of plans, studies, surveys, inventories, and so forth prepared by other
13 public and private sources.

14 (F) Consideration of contiguous land uses and transportation facilities.

15 (G) Whenever possible consistency with the state guide plan.

16 (v) The council shall prepare, adopt, administer, and cause to be implemented, including
17 specifically through its powers of coordination as set forth in subdivision 3 of this section, a
18 marine resources development plan and such special area management plans as the council may
19 determine to be appropriate or desirable as follows:

20 (A) Marine resources development plan.

21 (1) The purpose of the marine resources development plan shall be to provide an
22 integrated strategy for: (a) improving the health and functionality of Rhode Island's marine
23 ecosystem; (b) providing for appropriate marine-related economic development; and (c)
24 promoting the use and enjoyment of Rhode Island's marine resources by the people of the state.

25 (2) The marine resources development plan shall include specific goals and objectives
26 necessary to accomplish its purposes, performance measures to determine progress toward
27 achieving such goals and objectives, and an implementation program.

28 (3) The marine resources development plan shall be prepared in cooperation with the
29 department of environmental management, the statewide planning program, and the economic
30 development corporation, with the involvement of such other state agencies as may be
31 appropriate, and with such technical support as may be necessary and appropriate from the
32 Narragansett Bay Estuary Program, the Coastal Institute at the University of Rhode Island, and
33 Rhode Island Sea Grant.

34 (4) The plan shall be responsive to the requirements and principles of the federal coastal

1 zone management act as amended, including, but not limited to, the expectations of the act for
2 incorporating the federal clean water act into coastal zone management programs.

3 (5) The marine resources development plan shall take into account local land use
4 management responsibilities as provided for under title 45 and harbor management
5 responsibilities, and the preparation of the plan shall include opportunities for involvement and/or
6 comment by cities and towns.

7 (6) The marine resources development plan shall be adopted by the council in
8 accordance with the provisions of this subsection by July 1, 2005, shall as appropriate incorporate
9 the recommendations of the Governor's Narragansett Bay and Watershed Planning Commission,
10 and shall be made consistent with systems level plans as appropriate, in order to effectuate the
11 purposes of systems level planning. The council shall update the marine resources development
12 plan at least once every five (5) years.

13 (7) The council shall administer its programs, regulations, and implementation activities
14 in a manner consistent with the marine resources development plan.

15 (8) The marine resources development plan and any updates thereto shall be adopted as
16 appropriate as elements of the state guide plan pursuant to section 42-11-10.

17 (B) Special area management plans.

18 (1) The council shall adopt such special area management plans as deemed necessary
19 and desirable to provide for the integration and coordination of the protection of natural
20 resources, the promotion of reasonable coastal-dependent economic growth, and the improved
21 protection of life and property in the specific areas designated council as requiring such integrated
22 planning and coordination.

23 (2) The integrated planning and coordination herein specified shall include, but not be
24 limited to, federal agencies, state agencies, boards, commissions, and corporations, including
25 specifically the economic development corporation, and cities and towns, shall utilize to the
26 extent appropriate and feasible the capacities of entities of higher education, including Rhode
27 Island Sea Grant, and shall provide for the participation of advocacy groups, community-based
28 organizations, and private persons.

29 (3) The council shall administer its programs, regulations, and implementation activities
30 in a manner consistent with special area management plans.

31 (4) Special area management plans and any updates thereto shall be adopted as
32 appropriate as elements of the state guide plan pursuant to section 42-11-10.

33 (2) *Implementation.*

34 (i) The council is authorized to formulate policies and plans and to adopt regulations

1 necessary to implement its various management programs. With respect to such policies and
2 plans which relate to matters where the coastal resources management council and the department
3 of environmental management have concurrent jurisdiction and upon formulation of the plans and
4 regulations, the council shall, prior to adoption, submit the proposed plans or regulations to the
5 director of the environmental management for the director's review. The director shall review and
6 submit comments to the council within thirty (30) days of submission to the director by the
7 council. The comments of the director shall include findings with regard to the consistency of the
8 policies, plans and/or regulations with the requirements of laws administered by the department.
9 The council shall consider the director's comments prior to adoption of any such policies, plans or
10 regulations and shall respond in writing to findings of the director with regard to the consistency
11 of said policies, plans and/or regulations with the requirements of laws administered by the
12 department.

13 (ii) (A) The council shall have exclusive jurisdiction below mean high water for all
14 development, operations, and dredging, consistent with the requirements of chapter 6.1 of this
15 title and except as necessary for the department of environmental management to exercise its
16 powers and duties and to fulfill its responsibilities pursuant to sections 42-17.1-2 and 42-17.1-24,
17 and any person, firm, or governmental agency proposing any development or operation within,
18 above, or beneath the tidal water below the mean high water mark, extending out to the extent of
19 the state's jurisdiction in the territorial sea, shall be required to demonstrate that its proposal
20 would not:

21 (I) Conflict with any resources management plan or program;

22 (II) Make any area unsuitable for any uses or activities to which it is allocated by a
23 resources management plan or program adopted by the council; or (III) Significantly damage the
24 environment of the coastal region.

25 (B) The council shall be authorized to approve, modify, set conditions for, or reject any
26 such proposal.

27 (iii) The authority of the council over land areas (those areas above the mean high water
28 mark) shall be limited to two hundred feet (200') from the coastal physiographic feature or to that
29 necessary to carry out effective resources management programs. This shall be limited to the
30 authority to approve, modify, set conditions for, or reject the design, location, construction,
31 alteration, and operation of specified activities or land uses when these are related to a water area
32 under the agency's jurisdiction, regardless of their actual location. The council's authority over
33 these land uses and activities shall be limited to situations in which there is a reasonable
34 probability of conflict with a plan or program for resources management or damage to the coastal

1 environment. These uses and activities are:

2 (A) Power generating over forty (40) megawatts and desalination plants.

3 (B) Chemical or petroleum processing, transfer, or storage.

4 (C) Minerals extraction.

5 (D) Shoreline protection facilities and physiographical features, and all directly
6 associated contiguous areas which are necessary to preserve the integrity of the facility and/or
7 features.

8 (E) Coastal wetlands and all directly associated contiguous areas which are necessary to
9 preserve the integrity of the wetlands including any freshwater wetlands located in the vicinity of
10 the coast. The actual determination of freshwater wetlands located in coastal vicinities and under
11 the jurisdiction of the coastal resources management council shall be designated on such maps
12 that are agreed to in writing and made available for public use by the coastal resources
13 management council and the director, department of environmental management, within three (3)
14 months of [August 6, 1996]. The CRMC shall have exclusive jurisdiction over the wetlands areas
15 described in this section notwithstanding any provision of chapter 1, title 2 or any other provision
16 except that the division of agriculture maintains jurisdiction over all farming consistent with
17 section 2-1-22(i) and (j). Within six (6) months of [August 6, 1996] the council in cooperation
18 with the director shall develop rules and regulations for the management and protection of
19 freshwater wetlands, affected by an aquaculture project, outside of those freshwater wetlands
20 located in the vicinity of the coast and under the exclusive jurisdiction of the director of the
21 department of environmental management. For the purpose of this chapter, a "coastal wetland"
22 shall mean any salt marsh bordering on the tidal waters of this state, whether or not the tidal
23 waters reach the littoral areas through natural or artificial watercourses, and those uplands directly
24 associated and contiguous thereto which are necessary to preserve the integrity of that marsh.
25 Marshes shall include those areas upon which grow one or more of the following: smooth
26 cordgrass (*spartina alterniflora*), salt meadow grass (*spartina patens*), spike grass (*distichlis*
27 *spicata*), black rush (*juncus gerardi*), saltworts (*salicornia* spp.), sea lavender (*limonium*
28 *carolinianum*), saltmarsh bulrushes (*scirpus* spp.), hightide bush (*iva frutescens*), tall reed
29 (*phragmites communis*), tall cordgrass (*spartina pectinata*), broadleaf cattail (*typha latifolia*),
30 narrowleaf cattail (*typha angustifolia*), spike rush (*eleocharis rostellata*), chairmaker's rush
31 (*scirpus americana*), creeping bentgrass (*agrostis palustris*), sweet grass (*hierochloe odorata*), and
32 wild rye (*etlymus virginicus*).

33 (F) Sewage treatment and disposal and solid waste disposal facilities.

34 (G) Beneficial use, dewatering, and disposal of dredged material of marine origins,

1 where such activities take place within two hundred (200) feet of mean high water or a coastal
2 physiographic feature, or where there is a reasonable probability of conflict with a plan or
3 program for resources management or damage to the coastal environment.

4 (3) *Coordination.* - The council has the following coordinating powers and duties:

5 (i) Functioning as a binding arbitrator in any matter of dispute involving both the
6 resources of the state's coastal region and the interests of two (2) or more municipalities or state
7 agencies.

8 (ii) Consulting and coordinating actions with local, state, regional, and federal agencies
9 and private interests.

10 (iii) Conducting or sponsoring coastal research.

11 (iv) Advising the governor, the general assembly, and the public on coastal matters.

12 (v) Serving as the lead state agency and initial and primary point of contact for dredging
13 activities in tidal waters and in that capacity, integrating and coordinating the plans and policies
14 of other state agencies as they pertain to dredging in order to develop comprehensive programs
15 for dredging as required by subparagraph (1)(ii)(H) of this section and chapter 6.1 of this title.

16 The Rhode Island Resource Recovery Corporation prior to purchasing cover material for the state
17 landfill shall first contact CRMC to see if there is a source of suitable dredged material available
18 which shall be used in place of the purchase cover material. Other state agencies engaged in the
19 process of dump closures shall also contact the CRMC to see if there is a source of suitable
20 dredged material available, which shall be used in place of the purchase cover material. In
21 addition, cities and towns may contact the CRMC prior to closing city or town controlled dump
22 sites to see if there is a source of suitable dredge material available, which may be used in place
23 of the purchase cover material.

24 (vi) Acting as the state's representative to all bodies public and private on all coastal and
25 aquaculture related matters.

26 (4) *Operations.* - The council is authorized to exercise the following operating functions,
27 which are essential to management of coastal resources:

28 (i) Issue, modify, or deny permits for any work in, above, or beneath the areas under its
29 jurisdiction, including conduct of any form of aquaculture.

30 (ii) Issue, modify, or deny permits for dredging, filling, or any other physical alteration
31 of coastal wetlands and all directly related contiguous areas which are necessary to preserve the
32 integrity of the wetlands, including, but not limited to the transportation and disposal of dredge
33 materials in the tidal waters.

34 (iii) Grant licenses, permits, and easements for the use of coastal resources which are

1 held in trust by the state for all its citizens, and impose fees for private use of these resources.

2 (iv) Determining the need for and establishing pierhead, bulkhead, and harbor lines.

3 (v) Enforcing and implementing riparian rights in the tidal waters after judicial decisions.

4 (5) *Rights-of-way*.

5 (i) The council is responsible for the designation of all public rights-of-way to the tidal
6 water areas of the state, and shall carry on a continuing discovery of appropriate public rights-of-
7 way to the tidal water areas of the state.

8 (ii) The council shall maintain a complete file of all official documents relating to the
9 legal status of all public rights-of-way to the tidal water areas of the state.

10 (iii) (A) The council has the power to designate for acquisition and development, and
11 posting, and all other functions of any other department for tidal rights-of-way and land for tidal
12 rights-of-way, parking facilities, and other council related purposes.

13 (B) Further, the council has the power to develop and prescribe a standard sign to be
14 used by the cities and towns to mark designated rights-of-way.

15 (iv) In conjunction with this subdivision, every state department controlling state-owned
16 land close to or adjacent to ~~discovered~~ designated and stipulated rights-of-way ~~is authorized to~~
17 shall set out the land, or so much of the land ~~that may be deemed as it deems~~ necessary for public
18 parking, and every city and town that owns land, including, but not limited to, public streets,
19 close to or adjacent to CRMC designated rights-of-way shall set out the land, or so much of the
20 land, as it deems necessary for public parking.

21 (v) No use of land for public parking shall conflict with existing or intended use of the
22 land, and no improvement shall be undertaken by any state agency until detailed plans have been
23 submitted to and approved by the governing body of the local municipality.

24 (vi) In designating rights-of-way, the council shall consider the following matters in
25 making its designation:

26 (A) Land evidence records;

27 (B) The exercise of domain over the parcel such as maintenance, construction, or
28 upkeep;

29 (C) The payment of taxes;

30 (D) The creation of a dedication;

31 (E) Public use;

32 (F) Any other public record or historical evidence such as maps and street indexes;

33 (G) Other evidence as set out in section 42-35-10.

34 (vii) A determination by the council that a parcel is a right-of-way shall be decided by

1 substantial evidence.

2 (viii) The council shall be notified whenever by the judgment of the governing body of a
3 coastal municipality, a public right-of-way to tidal water areas located in such municipality has
4 ceased to be useful to the public, and such governing body proposes an order of abandonment of
5 such public right-of-way. Said notice shall be given not less than sixty (60) days prior to the date
6 of such abandonment.

7 (6) *Pre-existing residential boating facilities.*

8 (i) The council is hereby authorized and empowered to issue assent for pre-existing
9 residential boating facilities constructed prior to January 1, 1985. These assents may be issued for
10 pre-existing residential boating facilities, even though such facilities do not meet current
11 standards and policies of the council, provided, however, that the council finds that such facilities
12 do not pose any significant risk to the coastal resources of the state of Rhode Island and do not
13 endanger human safety.

14 (ii) In addition to the above criteria, the applicant shall provide clear and convincing
15 evidence that:

16 (A) The facility existed in substantially the same configuration as it now exists prior to
17 January 1, 1985;

18 (B) The facility is presently intact and functional; and

19 (C) The facility presents no significant threat to the coastal resources of the state of
20 Rhode Island or human safety.

21 (iii) The applicant, to be eligible for this provision, shall apply no later than January 31,
22 1999.

23 (iv) The council is directed to develop rules and regulations necessary to implement this
24 subdivision.

25 (v) It is the specific intent of this subsection to require that all pre-existing residential
26 boating facilities constructed on January 1, 1985 or thereafter conform to this chapter and the
27 plans, rules and regulations of the council.

28 (7) *Lease of filled lands which were formerly tidal lands to riparian or littoral owners.*

29 (i) Any littoral or riparian owner in this state who desires to obtain a lease from the state
30 of Rhode Island of any filled lands adjacent to his or her upland shall apply to the council, which
31 may make the lease. Any littoral or riparian owner who wishes to obtain a lease of filled lands
32 must obtain pre-approval, in the form of an assent, from the council. Any lease granted by the
33 council shall continue the public's interest in the filled lands including but not limited to the rights
34 of navigation, fishery, and commerce. The public trust in the lands shall continue and run

1 concurrently with the leasing of the lands by the state to private individuals, corporations, or
2 municipalities. Upon the granting of a lease by the council, those rights consistent with the public
3 trust and secured by the lease shall vest in the lessee. The council may approve a lease of filled
4 lands for an initial term of up to fifty (50) years, with, or without, a single option to renew for an
5 additional term of up to fifty (50) years.

6 (ii) The lessor of the lease, at any time, for cause, may by express act cancel and annul
7 any lease previously made to the riparian owner when it determines that the use of the lands is
8 violating the terms of the lease or is inconsistent with the public trust, and upon cancellation the
9 lands, and rights in the land so leased, shall revert to the state.

10 (8) "Marinas" as defined in the coastal resources management program in effect as of
11 June 1, 1997, are deemed to be one of the uses consistent with the public trust. Subdivision (7) is
12 not applicable to: (i) any riparian owner on tidal waters in this state (and any successor in interest
13 to the owner) which has an assent issued by the council to use any land under water in front of his
14 or her lands as a marina, which assent was in effect on June 1, 1997; (ii) any alteration,
15 expansion, or other activity at a marina (and any successor in interest) which has an assent issued
16 by the council, which assent was in effect on June 1, 1997; and (iii) any renewal of assent to a
17 marina (or successor in interest), which assent was issued by the council and in effect on June 1,
18 1997.

19 (9) "Recreational boating facilities" including marinas, launching ramps, and recreational
20 mooring areas, as defined by and properly permitted by the council, are deemed to be one of the
21 uses consistent with the public trust. Subdivision (7) is not applicable to: (i) any riparian owner
22 on tidal waters in this state (and any successor in interest to the owner) which has an assent issued
23 by the council to use any land under water in front of his or her lands as a recreational boating
24 facility; any alteration, expansion or other activity at a recreational boating facility (and any
25 successor in interest) which has an assent issued by the council, which assent was in effect as of
26 June 1, 1997; and (ii) any renewal of assent to a recreational boating facility (or successor in
27 interest), which assent was issued by the council and in effect on June 1, 1997.

28 SECTION 3. This act shall take effect on July 1, 2010.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T
RELATING TO WATER AND NAVIGATION - THE COASTAL RESOURCES
MANAGEMENT COUNCIL

- 1 This act would require cities and towns to provide free parking at CRMC designated
- 2 rights-of-way along the Rhode Island shore.
- 3 This act would take effect on July 1, 2010.

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