

**2007 -- H 5037 SUBSTITUTE A AS AMENDED**

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**STATE OF RHODE ISLAND**

**IN GENERAL ASSEMBLY**

**JANUARY SESSION, A.D. 2007**

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A N A C T

RELATING TO HEALTH AND SAFETY - RHODE ISLAND CESSPOOL ACT OF 2007

Introduced By: Representatives Walsh, Ginaitt, Handy, Long, and Dennigan

Date Introduced: January 10, 2007

Referred To: House Environment and Natural Resources

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 23 of the General Laws entitled "HEALTH AND SAFETY" is hereby  
2 amended by adding thereto the following chapter:

3 CHAPTER 19.15

4 THE RHODE ISLAND CESSPOOL ACT OF 2007

5 23-19.15-1. Short title. -- This chapter shall be known and may be cited as the "Rhode  
6 Island Cesspool Act of 2007."

7 23-19.15-2. Legislative findings. -- The general assembly hereby recognizes and  
8 declares that:

9 (1) There exists within certain portions of the state the need to abate pollution and threats  
10 to public health caused by cesspools, particularly high-risk cesspools that pose direct threats to  
11 public health and the environment.

12 (2) It is estimated that there are more than fifty thousand (50,000) cesspools within the  
13 state as of 2006.

14 (3) Cesspools are a substandard and often inadequate means of sewage treatment and  
15 disposal.

16 (4) Many cesspools contribute directly to groundwater and surface water contamination.

17 (5) Wastewater disposed from cesspools contains bacteria, viruses, ammonium and other  
18 pollutants with high biochemical oxygen demand, and may also include phosphates, chlorides,  
19 grease, and chemicals used to clean cesspools.

1           (6) Wastewater disposed from cesspools frequently exceeds drinking water health  
2 standards for certain contaminants.

3           (7) Wastewater disposed from cesspools can pose significant health threats to people who  
4 come into contact with, or consume, contaminated surface waters or groundwaters.

5           (8) Appropriate treatment of sewage disposed into the ground is essential to the  
6 protection of public health and the environment, particularly in relation to Narragansett Bay and  
7 the rest of the state's coastal region, and public drinking water resources.

8           (9) Replacement of cesspools with modern ISDS technology reduces risks to public  
9 health and the environment.

10          (10) In sewerred areas, sewer tie-ins offer a readily available, low-cost means of  
11 mitigating problems and threats caused by cesspools.

12          (11) A fund exists to assist homeowners with the costs of removing cesspools and  
13 inadequate septic systems and replacing them with an approved ISDS if the community in which  
14 the homeowner resides has created a wastewater management district in accordance with chapter  
15 45-24.5.

16          **23-19.15-3. Declaration of purpose. --** The purpose of this chapter is to phase-out use of  
17 cesspools that present the highest risk to public health and/or the environment – namely,  
18 cesspools located in close proximity to tidal water areas and public drinking waters. Additionally,  
19 this chapter is intended to allow for the identification and assessment of cesspools on all  
20 properties throughout the state that are subject to sale, and to phase-out any such cesspools that  
21 are found to be failed.

22          **23-19.15-4. Definitions. --** For the purposes of this chapter the following terms shall  
23 mean:

24          (1) "Cesspool" means any buried chamber other than an individual sewage disposal  
25 system, including, but not limited to, any metal tank, perforated concrete vault or covered hollow  
26 or excavation, which receives discharges of sanitary sewage from a building for the purpose of  
27 collecting solids and discharging liquids to the surrounding soil.

28          (2) "Department" means the department of environmental management as established in  
29 chapter 42-17.1.

30          (3) "Director" means the director of the department of environmental management or his  
31 or her designee.

32          (4) "Failed cesspool" means a cesspool where one or more of the following conditions  
33 exist: (i) the cesspool fails to accept or dispose of sewage, as evidenced by indicators of sewage at  
34 the ground surface above or adjacent to the cesspool, or in the building served; (ii) the liquid

1 depth in a cesspool is less than six (6) inches from the inlet pipe invert; (iii) pumping is required  
2 more than two (2) times a year; (iv) the cesspool is shown to have contaminated a drinking water  
3 well or watercourse; or (v) there is shown to be direct contact between the bottom of the cesspool  
4 and the groundwater table.

5 (5) "Individual sewage disposal system" or "ISDS" means any system of piping, tanks,  
6 disposal areas, alternative toilets or other facilities designed to function as a unit to convey, store,  
7 treat and/or dispose of sanitary sewage, by means other than discharge into a public sewer  
8 system.

9 (6) "System inspector" means a person approved by the department as capable of  
10 properly assessing the condition of an ISDS.

11 **23-19.15-5. Inspection.** -- (a) Unless exempted under subsection 23-19.15-8(a), the  
12 owner of property served by a cesspool in the following areas shall cause an inspection to be  
13 performed on said cesspool by a system inspector in accordance with a schedule established by  
14 the department, but no later than January 1, 2011:

15 (i) which cesspool is within two hundred feet (200) of the inland edge of a shoreline  
16 feature bordering a tidal water area [corresponding to the jurisdiction of the RI Coastal Resources  
17 Management Council];

18 (ii) which cesspool is within two hundred feet (200) of a public drinking water well; and  
19 (iii) which cesspool is within two hundred feet (200) of a surface drinking water supply,  
20 specifically the impoundment from which water is drawn via the intake.

21 The inspection shall be conducted and reported in accordance with procedures required  
22 by the department, and the results shall be recorded on forms prescribed by the department.

23 (b) Pursuant to section 5-20.8-13, every contract for the purchase and sale of real estate  
24 which is or may be served by a private cesspool, shall provide that potential purchasers be  
25 permitted a ten (10) day period, unless the parties mutually agree upon a different period of time,  
26 to conduct an inspection of the property's on-site sewage system in accordance with procedures  
27 required by the department in subsection 23-19.15-5(a), before becoming obligated under the  
28 contract to purchase.

29 **23-19.15-6. Cesspool removal and replacement.** -- (a) Cesspools found to be located  
30 within the areas identified in subsection 23-19.15-5(a) above shall cease to be used for sewage  
31 disposal and shall be properly abandoned in accordance with the following schedule:

32 (1) Tier 1 – Any cesspool deemed by the department or a system inspector to be failed in  
33 accordance with this chapter shall be properly abandoned within one year of discovery unless an  
34 immediate public health hazard is identified, in which case the director may require a shorter

1 period of time.

2 (2) Tier – 2 Any cesspool located on a property which has a sewer stub enabling  
3 connection to a public sewer shall be properly abandoned, and the building served by the cesspool  
4 shall be connected into the sewer, within two (2) years of the date of inspection; provided, that an  
5 extension may be granted by the municipality if insufficient capacity or resources exist(s) to  
6 accept additional connections at that time.

7 (3) Tier 3 – Any cesspool within two hundred feet (200) of a public drinking water well,  
8 or within two hundred feet (200) of the inland edge of a shoreline feature bordering a tidal water  
9 area [corresponding to the jurisdiction of the RI Coastal Resources Management Council], or  
10 within two hundred feet (200) of a surface drinking water supply [specifically, the impoundment  
11 from which water is drawn via the intake], shall be properly abandoned by January 1, 2013.

12 (b) Any cesspool required to be abandoned pursuant to this chapter shall be replaced with  
13 an approved ISDS, or the building served by the cesspool shall be connected to a public sewer,  
14 prior to the applicable deadlines contained in subsection 23-19.15-6(a).

15 **23-19.15-7. Waiver. --** The director may grant a waiver, to the extent necessary, from  
16 applicable provisions listed in subsection 23-19.15-6(a) provided the homeowner demonstrates  
17 undue hardship and the cesspool is not a failed system as defined herein. No waiver shall exceed  
18 five (5) years from the dates specified in subsection 23-19.15-6(a). Any waiver granted shall  
19 expire upon transfer or sale of the land or easement upon which the cesspool is located.

20 **23-19.15-8. Exemption. --** (a) The provisions of section 23-19.15-5 and subsection 23-  
21 19.15-6(a) shall not apply to any cesspool located in an area of a community covered by  
22 municipal on-site wastewater management ordinance that requires the risk-based phase-out of  
23 cesspools on an alternative schedule that meets the purposes of this act.

24 (b) The provisions of subsection 23-19.15-6(a) shall not apply to any cesspool located on  
25 a property that is properly designated to be sewerred no later than five (5) years after the  
26 applicable deadlines provided in subsection 23-19.15-6(a) provided: (i) it is not a failed cesspool  
27 as defined herein; (ii) the owner does not increase the design sewage flow into the cesspool or  
28 add bedrooms to the building served by the cesspool; (iii) the municipality holds bonding  
29 authorization or some other dedicated financial surety for expansion of sewers to the area of the  
30 building served by the cesspool; and (iv) the property owner certifies, in writing, that the  
31 dwelling/building will be connected to the sewer system within six (6) months of receipt of the  
32 notification to connect to the sewer system.

33 **23-19.15-9. Notice to remove and replace cesspools. --** (a) The owner of any cesspool  
34 who has not complied with the requirements pursuant to this chapter shall be in violation of this

1 chapter and subject to enforcement action by the department in accordance with chapters 42-17.1-  
2 2 and 42-17.6 of the general laws.

3 (b) Notwithstanding the above provisions, the director may require the abandonment and  
4 replacement of any cesspool with an approved ISDS prior to the dates specified in subsection 23-  
5 19.15-6(a) if the cesspool is a large capacity cesspool as defined pursuant to applicable federal  
6 regulations governing underground injection control (UIC) facilities.

7 **23-19.15-10. Regulations.** -- The department shall promulgate rules and regulations as  
8 may be necessary to implement and carry out the provisions of this chapter.

9 **23-19.15-11. Severability and construction.** -- The provisions of this chapter shall be  
10 severable, and if any court declares any phrase, clause, sentence, or provision of this chapter to be  
11 invalid, or its applicability to any government, agency, person, or circumstance is declared  
12 invalid, the remainder of the chapter and its relevant applicability shall not be affected. The  
13 provisions of this chapter shall be liberally construed to give effect to the purposes thereof.

14 SECTION 2. Section 520.8-2 of the General Laws in Chapter 520.8 entitled "Real  
15 Estate Sales Disclosures" is hereby amended to read as follows:

16 **5-20.8-2. Disclosure requirements.** -- (a) As soon as practicable, but in any event no  
17 later than prior to signing any agreement to transfer real estate, the seller of the real estate shall  
18 deliver a written disclosure to the buyer and to each agent with whom the seller knows he or she  
19 or the buyer has dealt in connection with the real estate. The written disclosure shall comply with  
20 the requirements set forth in subsection (b) of this section and shall state all deficient conditions  
21 of which the seller has actual knowledge. The agent shall not communicate the offer of the buyer  
22 until the buyer has received a copy of the written disclosure and signed a written receipt of the  
23 disclosure. If the buyer refuses to sign a receipt pursuant to this section, the seller or agent shall  
24 immediately sign and date a written account of the refusal. The agent is not liable for the accuracy  
25 or thoroughness of representations made by the seller in the written disclosure or for deficient  
26 conditions not disclosed to the agent by the seller.

27 (b) (1) The Rhode Island real estate commission may approve a form of written  
28 disclosure as required under this chapter or the seller may use a disclosure form substantially  
29 conforming to the requirements of this section. The following provisions shall appear  
30 conspicuously at the top of any written disclosure form: "Prior to the signing of an agreement to  
31 transfer real estate (vacant land or real property and improvements consisting of a house or  
32 building containing one to four (4) dwelling units), the seller is providing the buyer with this  
33 written disclosure of all deficient conditions of which the seller has knowledge. This is not a  
34 warranty by the seller that no other defective conditions exist, which there may or may not be.

1 The buyer should estimate the cost of repair or replacement of deficient conditions prior to  
2 submitting an offer on this real estate. The buyer is advised not to rely solely upon the  
3 representation of the seller made in this disclosure, but to conduct any inspections or  
4 investigations which the buyer deems to be necessary to protect his or her best interest." Nothing  
5 contained in this section shall be construed to impose an affirmative duty on the seller to conduct  
6 inspections as to the condition of this real estate.

7 (2) The disclosure form shall include the following information:

8 (i) Seller Occupancy -- (Length of Occupancy)

9 (ii) Year Built

10 (iii) Basement -- (Seepage, Leaks, Cracks, etc. Defects)

11 (iv) Sump Pump -- (Operational, Location, and Defects)

12 (v) Roof (Layers, Age and Defects)

13 (vi) Fireplaces -- (Number, Working and Maintenance, Defects)

14 (vii) Chimney -- (Maintenance History, Defects)

15 (viii) Woodburning Stove -- (Installation Date, Permit Received, Defects)

16 (ix) Structural Conditions -- (Defects)

17 (x) Insulation -- (Wall, Ceiling, Floor, UFFI)

18 (xi) Termites or other Pests -- (Treatment Company)

19 (xii) Radon -- (Test, Company) "Radon has been determined to exist in the State of  
20 Rhode Island. Testing for the presence of radon in residential real estate prior to purchase is  
21 advisable."

22 (xiii) Electrical Service -- (Imp. & Repairs, Electrical Service, Amps, Defects)

23 (xiv) Heating System -- (Type, Imp. & Repairs, Underground Tanks, Zones,  
24 Supplemental Heating, Defects)

25 (xv) Air Conditioning -- (Imp. & Repairs, Type, Defects)

26 (xvi) Plumbing -- (Imp. & Repairs, Defects)

27 (xvii) Sewage System -- (Assessment, Annual Fees, Type, Cesspool/Septic Location,  
28 Last Pumped, Maintenance History, Defects)

29 ["Potential purchasers of real estate in the state of Rhode Island are hereby notified that](#)  
30 [many properties in the state are still serviced by cesspools as defined in Rhode Island general law](#)  
31 [chapter 23-19.15 \(The Rhode Island Cesspool Phase-Out Act of 2007\). Cesspools are a](#)  
32 [substandard and inadequate means of sewage treatment and disposal, and cesspools often](#)  
33 [contribute to groundwater and surface water contamination. Requirements for abandonment and](#)  
34 [replacement of high-risk cesspools as established in Rhode Island general law Chapter 23-19.15](#)

1 [are primarily based upon a cesspool's non-treatment of wastewater and the inherent risks to public](#)  
2 [health and the environment due to a cesspool's distance from a tidal water area, or a public](#)  
3 [drinking water resource. Purchasers should consult Rhode Island general law chapter 23-19.15 for](#)  
4 [specific cesspool abandonment or replacement requirements. An inspection of property served by](#)  
5 [an on-site sewage system by a qualified professional is recommended prior to purchase. Pursuant](#)  
6 [to Rhode Island general law section 5-20.8-13, potential purchasers shall be permitted a ten \(10\)](#)  
7 [day period to conduct an inspection of a property's sewage system to determine if a cesspool](#)  
8 [exists, and if so, whether it will be subject to the phase-out requirements as established in Rhode](#)  
9 [Island general law chapter 23-19.15.](#)

10 (xviii) Water System -- (Imp. & Repairs, Type, Defects) Private water supply (well).

11 "The buyer understands that this property is, or will be served, by a private water supply (well)  
12 which may be susceptible to contamination and potentially harmful to health. If a public water  
13 supply is not available, the private water supply must be tested in accordance with regulations  
14 established by the Rhode Island department of health pursuant to section 23-1-5.3. The seller of  
15 that property is required to provide the buyer with a copy of any previous private water supply  
16 (well) testing results in the seller's possession and notify the buyer of any known problems with  
17 the private water supply (well)."

18 (xix) Domestic Hot Water -- (Imp. & Repairs, Type, Defects, Capacity of Tank)

19 (xx) Property Tax

20 (xxi) Easements and Encroachments -- The seller of that real estate is required to provide  
21 the buyer with a copy of any previous surveys of the real estate that are in the seller's possession  
22 and notify the buyer of any known easements, encroachments, covenants or restrictions of the  
23 seller's real estate. A buyer may wish to have a boundary or other survey independently  
24 performed at his or her own expense.

25 (xxii) Deed -- (Type, Number of Parcels)

26 (xxiii) Zoning -- (Permitted use, Classification) "Buyers of real estate in the state of  
27 Rhode Island are legally obligated to comply with all local real estate ordinances; including, but  
28 not limited to, ordinances on the number of unrelated persons who may legally reside in a  
29 dwelling, as well as ordinances on the number of dwelling units permitted under the local zoning  
30 ordinances." If the subject property is located in a historic district, that fact must be disclosed to  
31 the buyer, together with the notification that "property located in a historic district may be subject  
32 to construction, expansion or renovation limitations. Contact the local building inspection official  
33 for details."

34 (xxiv) Restrictions -- (Plat or Other)

1 (xxv) Building Permits

2 (xxvi) Minimum Housing -- (Violations)

3 (xxvii) Flood Plain -- (Flood Insurance)

4 (xxviii) Wetlands -- The location of coastal wetlands, bay, fresh water wetlands, pond,  
5 marsh, river bank or swamp, as those terms are defined in chapter 1 of title 2 and the associated  
6 buffer areas may impact future property development. The seller must disclose to the buyer any  
7 such determination on all or part of the land made by the department of environmental  
8 management.

9 (xxix) Multi-family or other Rental Property -- (Rental Income)

10 (xxx) Pools & Equipment -- (Type, Defects)

11 (xxxi) Lead Paint -- (Inspection) Every buyer of residential real estate built prior to 1978  
12 is hereby notified that those properties may have lead exposures that may place young children at  
13 risk of developing lead poisoning. Lead poisoning in young children may produce permanent  
14 neurological damage, including learning disabilities, reduced IQ behavioral problems, and  
15 impaired memory. The seller of that property is required to provide the buyer with a copy of any  
16 lead inspection report in the seller's possession and notify the buyer of any known lead poisoning  
17 problem. Environmental lead inspection is recommended prior to purchase.

18 (xxxii) Fire

19 (xxxiii) Hazardous Waste -- (Asbestos and Other Contaminants)

20 (xxxiv) Miscellaneous

21 (c) Any agreement to transfer real estate shall contain an acknowledgement that a  
22 completed real estate disclosure form has been provided to the buyer by the seller in accordance  
23 with the provisions of this section.

24 (d) The Rhode Island real estate commission has the right to amend the seller disclosure  
25 requirements by adding or deleting requirements when there is a determination that health, safety,  
26 or legal needs require a change. Any change to requirements shall be a rule change, subject to the  
27 Administrative Procedures Act, chapter 35 of title 42. The power of the commission to amend the  
28 written disclosure requirements shall be liberally construed so as to allow additional information  
29 to be provided as to the structural components, housing systems, and other property information  
30 as required by this chapter.

31 SECTION 3. Chapter 5-20.8 of the General Laws entitled "Real Estate Sales Disclosures"  
32 is hereby amended by adding thereto the following section:

33 **5-20.8-13. Cesspool inspection requirement.** – [\(a\) Every contract for the purchase and](#)  
34 [sale of real estate which is or may be served by a private cesspool, shall provide that potential](#)



1 purchasers be permitted a ten (10) day period, unless the parties mutually agree upon a different  
2 period of time, to conduct an inspection of a property's on-site sewage system, before becoming  
3 obligated under the contract to purchase, to determine if a cesspool exists, and if so, whether it  
4 will be subject to the phase-out requirements as established in Rhode Island general law chapter  
5 23-19.15.

6 (b) Failure to include the provision required in subsection (a) in the purchase and sale  
7 agreement for real estate does not create any defect in title.

8 (c) Failure to provide the results of any previous inspection of a cesspool servicing the  
9 property does not create any defect in title.

10 (d) Failure to include the purchase and sale agreement provision required in subsection  
11 (a) of this section or failure to provide previous inspection results of a cesspool servicing the  
12 property entitles the purchaser to void the purchase and sale agreement by providing notice in  
13 writing to the seller prior to the transfer of the title at closing.

14 SECTION 4. This act shall take effect on June 1, 2008.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO HEALTH AND SAFETY - RHODE ISLAND CESSPOOL ACT OF 2007

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1           This act would phase-out use of cesspools that present the highest risks to public health  
2 and/or the environment.

3           This act would take effect on June 1, 2008.

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