

2023 -- H 5779 SUBSTITUTE A

LC001792/SUB A

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2023

A N A C T

RELATING TO WATERS AND NAVIGATION -- COASTAL RESOURCES MANAGEMENT  
COUNCIL

Introduced By: Representatives Knight, Speakman, and Cortvriend

Date Introduced: February 22, 2023

Referred To: House Judiciary

(By Request)

It is enacted by the General Assembly as follows:

SECTION 1. Sections 46-23-20, 46-23-20.1, 46-23-20.2 and 46-23-20.4 of the General Laws in Chapter 46-23 entitled "Coastal Resources Management Council" are hereby amended to read as follows:

**46-23-20. Administrative hearings.**

All contested cases, all contested enforcement proceedings, and all contested administrative fines shall be heard by the administrative hearing officers, ~~or by subcommittees~~ as provided in § 46-23-20.1, pursuant to the regulations promulgated by the council; provided, however, that no proceeding and hearing prior to the appointment of the hearing officers shall be subject to the provisions of this section. Notwithstanding the foregoing, the ~~commissioner~~ executive director of coastal resources management shall be authorized, in his or her discretion, to resolve contested licensing and enforcement proceedings through informal disposition pursuant to regulations promulgated by the council.

**46-23-20.1. ~~Hearing officers~~ — ~~Appointment~~ — ~~Compensation~~ — ~~Subcommittee~~**

**Hearing officers -- Appointment -- Compensation.**

(a) The governor, with the advice and consent of the senate, shall appoint at least one and up to two (2) hearing officers who shall be ~~attorneys-at-law~~ attorney(s)-at-law, who, prior to their appointment, shall have practiced law for a period of not less than five (5) years for a term of five (5) years; provided, however, that the initial appointments shall be as follows: ~~one~~ the first

1 appointment of a hearing officer shall be ~~appointed~~ for a term of three (3) years and ~~one~~ if a second  
2 hearing officer ~~shall be appointed for a~~ is appointed, the term of shall be for five (5) years. The  
3 appointees shall be addressed as hearing officers.

4 (b) The governor shall designate one of the hearing officers as chief hearing officer. The  
5 hearing officers shall hear proceedings as provided by this section, and the council, with the  
6 assistance of the chief hearing officer, may promulgate such rules and regulations as shall be  
7 necessary or desirable to effect the purposes of this section.

8 (c) A hearing officer shall be devoted full time to these administrative duties, and shall not  
9 otherwise practice law while holding office nor be a partner nor an associate of any person in the  
10 practice of law.

11 (d) ~~Compensation for hearing officers shall be determined by the unclassified pay board.~~

12 (e) ~~Whenever the chairperson of the coastal resources management council or, in the~~  
13 ~~absence of the chairperson, the commissioner of coastal resources makes a finding that the hearing~~  
14 ~~officers are otherwise engaged and unable to hear a matter in a timely fashion, he or she may~~  
15 ~~appoint a subcommittee which will act as hearing officers in any contested case coming before the~~  
16 ~~council. The subcommittee shall consist of at least one member; provided, however, that in all~~  
17 ~~contested cases an additional member shall be a resident of the coastal community affected. The~~  
18 ~~city or town council of each coastal community shall, at the beginning of its term of office, appoint~~  
19 ~~a resident of that city or town to serve as an alternate member of the aforesaid subcommittee should~~  
20 ~~there be no existing member of the coastal resources management council from that city or town~~  
21 ~~available to serve on the subcommittee. Any member of the subcommittee actively engaged in~~  
22 ~~hearing a case shall continue to hear the case, even though his or her term may have expired, until~~  
23 ~~the case is concluded and a vote taken thereon. Hearings before subcommittees shall be subject to~~  
24 ~~all rules of practice and procedure as govern hearings before hearing officers.~~ Notwithstanding any  
25 other law to the contrary, if a hearing officer is not appointed, confirmed and engaged within ninety  
26 (90) days of the effective date of this section, or the position of hearing officer is vacant for more  
27 than ninety (90) days, the executive director is empowered and directed to hire a hearing officer.  
28 The executive director shall hire a hearing officer, who shall be in the unclassified service, for a  
29 term of five (5) years and shall have practiced law for a period of not less than five (5) years and  
30 shall meet the requirements set forth in subsections (c) and (d) of this section.

31 (f) If at least one hearing officer has been appointed, confirmed and engaged or hired by  
32 the executive director and is unable to hear a case in a timely manner as required by law, the  
33 executive director may hire a hearing officer employed by the state in such capacity, who shall have  
34 practiced law for a period of not less than five (5) years and meets the requirements set forth in

1 subsection (c) of this section to adjudicate pending contested cases.

2 **46-23-20.2. Clerk.**

3 The ~~commissioner~~ executive director of coastal resources or his or her designee shall serve  
4 as clerk to the hearing officers. The clerk shall have general charge of the office, keep a full record  
5 of proceedings, file and preserve all documents and papers, prepare such papers and notices as may  
6 be required, and perform such other duties as required. The ~~commissioner~~ executive director and  
7 hearing officers shall have the power to issue subpoenas for witnesses and documents and to  
8 administer oaths in all cases before any hearing officer or pertaining to the duties of his or her  
9 office.

10 **46-23-20.4. Hearings — Orders.**

11 (a) ~~Subject to the provisions of this chapter, every~~ Every hearing for the adjudication of a  
12 violation or for a contested matter shall be held before a hearing officer ~~or a subcommittee. The~~  
13 ~~chief hearing officer shall assign a hearing officer to each matter not assigned to a subcommittee.~~  
14 After due consideration of the evidence and arguments, the hearing officer shall make written  
15 proposed findings of fact and proposed conclusions of law which shall be made public when  
16 submitted to the council for review. The council may, in its discretion, adopt, modify, or reject the  
17 findings of fact and/or conclusions of law; provided, however, that any modification or rejection  
18 of the proposed findings of fact or conclusions of law shall be in writing and shall state the  
19 rationales therefor.

20 (b) The director of the department of environmental management and the coastal resources  
21 management council shall promulgate such rules and regulations, not inconsistent with law, as to  
22 assure uniformity of proceedings as applicable.

23 **SECTION 2. This act shall take effect upon passage.**

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO WATERS AND NAVIGATION -- COASTAL RESOURCES MANAGEMENT  
COUNCIL

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1           This act would require the executive director of the coastal resources management council  
2   to hire a hearing officer if the position is vacant for more than ninety (90) days after the effective  
3   date of this act.

4           This act would take effect upon passage.

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