

2012 -- S 2548 SUBSTITUTE A

=====
LC01597/SUB A
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2012

—————
A N A C T

RELATING TO WATERS AND NAVIGATION - COASTAL RESOURCES MANAGEMENT
COUNCIL

Introduced By: Senators Sosnowski, Felag, DiPalma, Walaska, and McCaffrey

Date Introduced: February 28, 2012

Referred To: Senate Environment & Agriculture

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 46-23-6 of the General Laws in Chapter 46-23 entitled "Coastal
2 Resources Management Council" is hereby amended to read as follows:

3 **46-23-6. Powers and duties -- Rights-of-way. --** In order to properly manage coastal
4 resources the council has the following powers and duties:

5 (1) Planning and management.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (D) Water quality standards set by the director of the department of environmental
32 management.

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

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

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

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

7 (A) Marine resources development plan.

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

12 (II) The marine resources development plan shall include specific goals and objectives
13 necessary to accomplish its purposes, performance measures to determine progress toward
14 achieving such goals and objectives, and an implementation program.

15 (III) The marine resources development plan shall be prepared in cooperation with the
16 department of environmental management, the statewide planning program, and the economic
17 development corporation, with the involvement of such other state agencies as may be
18 appropriate, and with such technical support as may be necessary and appropriate from the
19 Narragansett Bay Estuary Program, the Coastal Institute at the University of Rhode Island, and
20 Rhode Island Sea Grant.

21 (IV) The plan shall be responsive to the requirements and principles of the federal
22 coastal zone management act as amended, including, but not limited to, the expectations of the act
23 for incorporating the federal Clean Water Act into coastal zone management programs.

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

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

34 (VII) The council shall administer its programs, regulations, and implementation

1 activities in a manner consistent with the marine resources development plan.

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

4 (B) Special area management plans.

5 (I) The council shall adopt such special area management plans as deemed necessary and
6 desirable to provide for the integration and coordination of the protection of natural resources, the
7 promotion of reasonable coastal-dependent economic growth, and the improved protection of life
8 and property in the specific areas designated council as requiring such integrated planning and
9 coordination.

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

16 (III) The council shall administer its programs, regulations, and implementation
17 activities in a manner consistent with special area management plans.

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

20 (2) Implementation.

21 (i) The council is authorized to formulate policies and plans and to adopt regulations
22 necessary to implement its various management programs. With respect to such policies and
23 plans which relate to matters where the coastal resources management council and the department
24 of environmental management have concurrent jurisdiction and upon formulation of the plans and
25 regulations, the council shall, prior to adoption, submit the proposed plans or regulations to the
26 director of the department of environmental management for the director's review. The director
27 shall review and submit comments to the council within thirty (30) days of submission to the
28 director by the council. The comments of the director shall include findings with regard to the
29 consistency of the policies, plans and/or regulations with the requirements of laws administered
30 by the department. The council shall consider the director's comments prior to adoption of any
31 such policies, plans or regulations and shall respond in writing to findings of the director with
32 regard to the consistency of said policies, plans and/or regulations with the requirements of laws
33 administered by the department.

34 (ii) (A) The council shall have exclusive jurisdiction below mean high water for all

1 development, operations, and dredging, consistent with the requirements of chapter 6.1 of this
2 title and except as necessary for the department of environmental management to exercise its
3 powers and duties and to fulfill its responsibilities pursuant to sections 42-17.1-2 and 42-17.1-24,
4 and any person, firm, or governmental agency proposing any development or operation within,
5 above, or beneath the tidal water below the mean high water mark, extending out to the extent of
6 the state's jurisdiction in the territorial sea, shall be required to demonstrate that its proposal
7 would not:

- 8 (I) Conflict with any resources management plan or program;
- 9 (II) Make any area unsuitable for any uses or activities to which it is allocated by a
10 resources management plan or program adopted by the council; or
- 11 (III) Significantly damage the environment of the coastal region.

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

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

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

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

25 (C) Minerals extraction.

26 (D) Shoreline protection facilities and physiological features, and all directly
27 associated contiguous areas which are necessary to preserve the integrity of the facility and/or
28 features.

29 (E) Coastal wetlands and all directly associated contiguous areas which are necessary to
30 preserve the integrity of the wetlands including any freshwater wetlands located in the vicinity of
31 the coast. The actual determination of freshwater wetlands located in coastal vicinities and under
32 the jurisdiction of the coastal resources management council shall be designated on such maps
33 that are agreed to in writing and made available for public use by the coastal resources
34 management council and the director, department of environmental management, within three (3)

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

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

21 (G) Beneficial use, dewatering, and disposal of dredged material of marine origins,
22 where such activities take place within two hundred (200) feet of mean high water or a coastal
23 physiographic feature, or where there is a reasonable probability of conflict with a plan or
24 program for resources management or damage to the coastal environment.

25 (iv) Notwithstanding the provisions of subsections (ii) and (iii) above, the department of
26 environmental management shall maintain jurisdiction over the administration of chapter 1, title
27 2, including permitting of freshwater wetlands alterations and enforcement, with respect to all
28 agricultural activities undertaken by a farmer, as that term is defined in subsection 2-1-22(j),
29 wherever located; provided, however, that with respect to activities located partially or
30 completely within two hundred feet (200') of the coastal physiographic feature, the department
31 shall exercise jurisdiction in consultation with the council.

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

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

1 agencies.

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

4 (iii) Conducting or sponsoring coastal research.

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

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

10 The Rhode Island resource recovery corporation prior to purchasing cover material for the state
11 landfill shall first contact the CRMC to see if there is a source of suitable dredged material
12 available which shall be used in place of the purchase cover material. Other state agencies
13 engaged in the process of dump closures shall also contact the CRMC to see if there is a source of
14 suitable dredged material available, which shall be used in place of the purchase cover material.
15 In addition, cities and towns may contact the CRMC prior to closing city or town controlled
16 dump sites to see if there is a source of suitable dredge material available, which may be used in
17 place of the purchase cover material.

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

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

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

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

28 (iii) Grant licenses, permits, and easements for the use of coastal resources which are
29 held in trust by the state for all its citizens, and impose fees for private use of these resources.

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

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

32 (vi) The council may require an owner or operator of a commercial wharf or pier of a
33 marine commercial facility, as defined in 300.3 of the Rhode Island coastal resources
34 management program, but not including those facilities defined in 300.4 of the Rhode Island

1 coastal resources management program, and which is capable of offloading cargo, and is or will
2 be subject to a new use or a significant intensification of an existing use, to demonstrate that the
3 commercial wharf or pier is fit for that purpose. For the purposes of this subsection, a
4 "commercial wharf or pier" means a pier, bulkhead, wharf, docking facility, or underwater
5 utilities. The council may order said owner or operator to provide an engineering certification to
6 the council's satisfaction that the commercial wharf or pier is fit for the new use or intensification
7 of an existing use. If the council determines that the commercial wharf or pier is not fit, it may
8 order the owner or operator to undertake the necessary work to make the commercial wharf or
9 pier safe, within a reasonable time frame. If the council determines that the commercial wharf or
10 pier, because of its condition, is an immediate threat to public health and safety it may order the
11 commercial wharf or pier closed until the necessary work to make the commercial wharf or pier
12 safe has been performed and approved by the council. All work performed must conform to the
13 council's management program. The council is also given the authority to develop regulations to
14 carry out this provision and to impose administrative penalties of five thousand dollars (\$5,000)
15 per day up to a maximum of twenty thousand dollars (\$20,000) consistent with section 46-23-7.1
16 where there has been a violation of the orders under this provision.

17 (5) Rights-of-way.

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

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

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

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

28 (iv) In conjunction with this subdivision, every state department controlling state-owned
29 land close to or adjacent to discovered rights-of-way is authorized to set out the land, or so much
30 of the land that may be deemed necessary for public parking.

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

34 (vi) In designating rights-of-way, the council shall consider the following matters in

1 making its designation:

2 (A) Land evidence records;

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

5 (C) The payment of taxes;

6 (D) The creation of a dedication;

7 (E) Public use;

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

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

10 (vii) A determination by the council that a parcel is a right-of-way shall be decided by
11 substantial evidence.

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

17 (6) Pre-existing residential boating facilities.

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

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

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

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

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

31 (iii) The applicant, to be eligible for this provision, shall apply no later than January 31,
32 1999.

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

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

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

5 (i) Any littoral or riparian owner in this state who desires to obtain a lease from the state
6 of Rhode Island of any filled lands adjacent to his or her upland shall apply to the council, which
7 may make the lease. Any littoral or riparian owner who wishes to obtain a lease of filled lands
8 must obtain pre-approval, in the form of an assent, from the council. Any lease granted by the
9 council shall continue the public's interest in the filled lands including, but not limited to, the
10 rights of navigation, fishery, and commerce. The public trust in the lands shall continue and run
11 concurrently with the leasing of the lands by the state to private individuals, corporations, or
12 municipalities. Upon the granting of a lease by the council, those rights consistent with the public
13 trust and secured by the lease shall vest in the lessee. The council may approve a lease of filled
14 lands for an initial term of up to fifty (50) years, with, or without, a single option to renew for an
15 additional term of up to fifty (50) years.

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

20 (8) "Marinas" as defined in the coastal resources management program in effect as of
21 June 1, 1997, are deemed to be one of the uses consistent with the public trust. Subdivision (7) is
22 not applicable to:

23 (i) Any riparian owner on tidal waters in this state (and any successor in interest to the
24 owner) which has an assent issued by the council to use any land under water in front of his or her
25 lands as a marina, which assent was in effect on June 1, 1997;

26 (ii) Any alteration, expansion, or other activity at a marina (and any successor in interest)
27 which has an assent issued by the council, which assent was in effect on June 1, 1997; and

28 (iii) Any renewal of assent to a marina (or successor in interest), which assent was issued
29 by the council and in effect on June 1, 1997.

30 (9) "Recreational boating facilities" including marinas, launching ramps, and recreational
31 mooring areas, as defined by and properly permitted by the council, are deemed to be one of the
32 uses consistent with the public trust. Subdivision (7) is not applicable to:

33 (i) Any riparian owner on tidal waters in this state (and any successor in interest to the
34 owner) which has an assent issued by the council to use any land under water in front of his or her

1 lands as a recreational boating facility; any alteration, expansion or other activity at a recreational
2 boating facility (and any successor in interest) which has an assent issued by the council, which
3 assent was in effect as of June 1, 1997; and

4 (ii) Any renewal of assent to a recreational boating facility (or successor in interest),
5 which assent was issued by the council and in effect on June 1, 1997.

6 SECTION 2. This act shall take effect upon passage.

=====
LC01597/SUB A
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO WATERS AND NAVIGATION - COASTAL RESOURCES MANAGEMENT
COUNCIL

1 This act would provide that agricultural wetlands in the state's coastal regions that are
2 used by a farmer for normal farming activities would be subject to the exclusive jurisdiction and
3 enforcement of the department of environmental management, except, with respect to activities
4 located partially or completely within two hundred feet (200') of the coastal physiographic
5 feature, the department of environmental management would exercise jurisdiction in consultation
6 with the council.

7 This act would take effect upon passage.

=====
LC01597/SUB A
=====