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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2017

A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT - DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

Introduced By: Representatives Keable, O'Grady, Winfield, and Fogarty

Date Introduced: January 19, 2017

Referred To: House Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 42-17.1-2 and 42-17.1-4 of the General Laws in Chapter 42-17.1
2 entitled "Department of Environmental Management" are hereby amended to read as follows:

3 **42-17.1-2. Powers and duties.**

4 The director of environmental management shall have the following powers and duties:

5 (1) To supervise and control the protection, development, planning, and utilization of the
6 natural resources of the state, such resources, including, but not limited to: water, plants, trees,
7 soil, clay, sand, gravel, rocks and other minerals, air, mammals, birds, reptiles, amphibians, fish,
8 shellfish, and other forms of aquatic, insect, and animal life;

9 (2) To exercise all functions, powers, and duties heretofore vested in the department of
10 agriculture and conservation, and in each of the divisions of the department, such as the
11 promotion of agriculture and animal husbandry in their several branches, including the inspection
12 and suppression of contagious diseases among animals; the regulation of the marketing of farm
13 products; the inspection of orchards and nurseries; the protection of trees and shrubs from
14 injurious insects and diseases; protection from forest fires; the inspection of apiaries and the
15 suppression of contagious diseases among bees; the prevention of the sale of adulterated or
16 misbranded agricultural seeds; promotion and encouragement of the work of farm bureaus, in
17 cooperation with the University of Rhode Island, farmers' institutes, and the various organizations
18 established for the purpose of developing an interest in agriculture; together with such other

1 agencies and activities as the governor and the general assembly may, from time to time, place
2 under the control of the department; and as heretofore vested by such of the following chapters
3 and sections of the general laws as are presently applicable to the department of environmental
4 management and that were previously applicable to the department of natural resources and the
5 department of agriculture and conservation or to any of its divisions: chapters 1 through 22,
6 inclusive, as amended, in title 2 entitled "Agriculture and Forestry"; chapters 1 through 17,
7 inclusive, as amended, in title 4 entitled "Animals and Animal Husbandry"; chapters 1 through
8 19, inclusive, as amended, in title 20 entitled "Fish and Wildlife"; chapters 1 through 32,
9 inclusive, as amended, in title 21 entitled "Food and Drugs"; chapter 7 of title 23, as amended,
10 entitled "Mosquito Abatement"; and by any other general or public law relating to the department
11 of agriculture and conservation or to any of its divisions or bureaus;

12 (3) To exercise all the functions, powers, and duties heretofore vested in the division of
13 parks and recreation of the department of public works by chapters 1, 2, and 5 in title 32 entitled
14 "Parks and Recreational Areas"; by chapter 22.5 of title 23, as amended, entitled "Drowning
15 Prevention and Lifesaving"; and by any other general or public law relating to the division of
16 parks and recreation;

17 (4) To exercise all the functions, powers, and duties heretofore vested in the division of
18 harbors and rivers of the department of public works, or in the department itself by such as were
19 previously applicable to the division or the department, of chapters 1 through 22 and sections
20 thereof, as amended, in title 46 entitled "Waters and Navigation"; and by any other general or
21 public law relating to the division of harbors and rivers;

22 (5) To exercise all the functions, powers, and duties heretofore vested in the department
23 of health by chapters 25, 18.9, and 19.5 of title 23, as amended, entitled "Health and Safety"; and
24 by chapters 12 and 16 of title 46, as amended, entitled "Waters and Navigation"; by chapters 3, 4,
25 5, 6, 7, 9, 11, 13, 18, and 19 of title 4, as amended, entitled "Animals and Animal Husbandry";
26 and those functions, powers, and duties specifically vested in the director of environmental
27 management by the provisions of § 21-2-22, as amended, entitled "Inspection of Animals and
28 Milk"; together with other powers and duties of the director of the department of health as are
29 incidental to, or necessary for, the performance of the functions transferred by this section;

30 (6) To cooperate with the Rhode Island commerce corporation in its planning and
31 promotional functions, particularly in regard to those resources relating to agriculture, fisheries,
32 and recreation;

33 (7) To cooperate with, advise, and guide conservation commissions of cities and towns
34 created under chapter 35 of title 45 entitled "Conservation Commissions", as enacted by chapter

1 203 of the Public Laws, 1960;

2 (8) To assign or reassign, with the approval of the governor, any functions, duties, or
3 powers established by this chapter to any agency within the department, except as hereinafter
4 limited;

5 (9) To cooperate with the water resources board and to provide to the board facilities,
6 administrative support, staff services, and such other services as the board shall reasonably
7 require for its operation and, in cooperation with the board and the statewide planning program,
8 to formulate and maintain a long-range guide plan and implementing program for development of
9 major water-sources transmission systems needed to furnish water to regional- and local-
10 distribution systems;

11 (10) To cooperate with the solid waste management corporation and to provide to the
12 corporation such facilities, administrative support, staff services, and such other services within
13 the department as the corporation shall reasonably require for its operation;

14 (11) To provide for the maintenance of waterways and boating facilities, consistent with
15 chapter 6.1 of title 46, by: (i) Establishing minimum standards for upland beneficial use and
16 disposal of dredged material; (ii) Promulgating and enforcing rules for water quality, ground
17 water protection, and fish and wildlife protection pursuant to § 42-17.1-24; (iii) Planning for the
18 upland beneficial use and/or disposal of dredged material in areas not under the jurisdiction of the
19 council pursuant to § 46-23-6(2); and (iv) Cooperating with the coastal resources management
20 council in the development and implementation of comprehensive programs for dredging as
21 provided for in §§ 46-23-6(1)(ii)(H) and 46-23-18.3; and (v) Monitoring dredge material
22 management and disposal sites in accordance with the protocols established pursuant to § 46-6.1-
23 5(3) and the comprehensive program provided for in § 46-23-6(1)(ii)(H); no powers or duties
24 granted herein shall be construed to abrogate the powers or duties granted to the coastal resources
25 management council under chapter 23 of title 46, as amended;

26 (12) To establish minimum standards, subject to the approval of the environmental
27 standards board, relating to the location, design, construction, and maintenance of all sewage-
28 disposal systems;

29 (13) To enforce, by such means as provided by law, the standards for the quality of air,
30 and water, and the design, construction, and operation of all sewage-disposal systems; any order
31 or notice issued by the director relating to the location, design, construction, or maintenance of a
32 sewage-disposal system shall be eligible for recordation under chapter 13 of title 34. The director
33 shall forward the order or notice to the city or town wherein the subject property is located and
34 the order or notice shall be recorded in the general index by the appropriate municipal official in

1 the land evidence records in the city or town wherein the subject property is located. Any
2 subsequent transferee of that property shall be responsible for complying with the requirements of
3 the order or notice. Upon satisfactory completion of the requirements of the order or notice, the
4 director shall provide written notice of the same, which notice shall be similarly eligible for
5 recordation. The original written notice shall be forwarded to the city or town wherein the subject
6 property is located and the notice of satisfactory completion shall be recorded in the general index
7 by the appropriate municipal official in the land evidence records in the city or town wherein the
8 subject property is located. A copy of the written notice shall be forwarded to the owner of the
9 subject property within five (5) days of a request for it, and, in any event, shall be forwarded to
10 the owner of the subject property within thirty (30) days after correction;

11 (14) To establish minimum standards for the establishment and maintenance of salutary
12 environmental conditions, including standards and methods for the assessment and the
13 consideration of the cumulative effects on the environment of regulatory actions and decisions,
14 which standards for consideration of cumulative effects shall provide for: (i) Evaluation of
15 potential cumulative effects that could adversely effect public health and/or impair ecological
16 functioning; (ii) Analysis of such other matters relative to cumulative effects as the department
17 may deem appropriate in fulfilling its duties, functions and powers; which standards and methods
18 shall only be applicable to ISDS systems in the town of Jamestown in areas that are dependent for
19 water supply on private and public wells, unless broader use is approved by the general assembly.
20 The department shall report to the general assembly not later than March 15, 2008, with regard to
21 the development and application of such standards and methods in Jamestown;

22 (15) To establish and enforce minimum standards for permissible types of septage,
23 industrial-waste disposal sites, and waste-oil disposal sites;

24 (16) To establish minimum standards, subject to the approval of the environmental
25 standards board, for permissible types of refuse disposal facilities; the design, construction,
26 operation, and maintenance of disposal facilities; and the location of various types of facilities;

27 (17) To exercise all functions, powers, and duties necessary for the administration of
28 chapter 19.1 of title 23 entitled "Rhode Island Hazardous Waste Management Act";

29 (18) To designate, in writing, any person in any department of the state government or
30 any official of a district, county, city, town, or other governmental unit, with that official's
31 consent, to enforce any rule, regulation, or order promulgated and adopted by the director under
32 any provision of law; provided, however, that enforcement of powers of the coastal resources
33 management council shall be assigned only to employees of the department of environmental
34 management, except by mutual agreement or as otherwise provided in chapter 23 of title 46;

1 (19) To issue and enforce such rules, regulations, and orders as may be necessary to carry
2 out the duties assigned to the director and the department by any provision of law; and to conduct
3 such investigations and hearings and to issue, suspend, and revoke such licenses as may be
4 necessary to enforce those rules, regulations, and orders. Any license suspended under such rules,
5 regulations, and/or orders shall be terminated and revoked if the conditions that led to the
6 suspension are not corrected to the satisfaction of the director within two (2) years; provided that
7 written notice is given by certified mail, return receipt requested, no less than sixty (60) days
8 prior to the date of termination.

9 Notwithstanding the provisions of § 42-35-9 to the contrary, no informal disposition of a
10 contested licensing matter shall occur where resolution substantially deviates from the original
11 application unless all interested parties shall be notified of said proposed resolution and provided
12 with opportunity to comment upon said resolution pursuant to applicable law and any rules and
13 regulations established by the director;

14 (20) To enter, examine, or survey, at any reasonable time, such places as the director
15 deems necessary to carry out his or her responsibilities under any provision of law subject to the
16 following provisions:

17 (i) For criminal investigations, the director shall, pursuant to chapter 5 of title 12, seek a
18 search warrant from an official of a court authorized to issue warrants, unless a search without a
19 warrant is otherwise allowed or provided by law;

20 (ii) (A) All administrative inspections shall be conducted pursuant to administrative
21 guidelines promulgated by the department in accordance with chapter 35 of title 42;

22 (B) A warrant shall not be required for administrative inspections if conducted under the
23 following circumstances, in accordance with the applicable constitutional standards:

24 (I) For closely regulated industries;

25 (II) In situations involving open fields or conditions that are in plain view;

26 (III) In emergency situations;

27 (IV) In situations presenting an imminent threat to the environment or public health,
28 safety, or welfare;

29 (V) If the owner, operator, or agent in charge of the facility, property, site, or location
30 consents; or

31 (VI) In other situations in which a warrant is not constitutionally required.

32 (C) Whenever it shall be constitutionally or otherwise required by law, or whenever the
33 director in his or her discretion deems it advisable, an administrative search warrant, or its
34 functional equivalent, may be obtained by the director from a neutral magistrate for the purpose

1 of conducting an administrative inspection. The warrant shall be issued in accordance with the
2 applicable constitutional standards for the issuance of administrative search warrants. The
3 administrative standard of probable cause, not the criminal standard of probable cause, shall
4 apply to applications for administrative search warrants;

5 (I) The need for, or reliance upon, an administrative warrant shall not be construed as
6 requiring the department to forfeit the element of surprise in its inspection efforts;

7 (II) An administrative warrant issued pursuant to this subsection must be executed and
8 returned within ten (10) days of its issuance date unless, upon a showing of need for additional
9 time, the court orders otherwise;

10 (III) An administrative warrant may authorize the review and copying of documents that
11 are relevant to the purpose of the inspection. If documents must be seized for the purpose of
12 copying, and the warrant authorizes such seizure, the person executing the warrant shall prepare
13 an inventory of the documents taken. The time, place, and manner regarding the making of the
14 inventory shall be set forth in the terms of the warrant itself, as dictated by the court. A copy of
15 the inventory shall be delivered to the person from whose possession or facility the documents
16 were taken. The seized documents shall be copied as soon as feasible under circumstances
17 preserving their authenticity, then returned to the person from whose possession or facility the
18 documents were taken;

19 (IV) An administrative warrant may authorize the taking of samples of air, water, or soil
20 or of materials generated, stored, or treated at the facility, property, site, or location. Upon
21 request, the department shall make split samples available to the person whose facility, property,
22 site, or location is being inspected;

23 (V) Service of an administrative warrant may be required only to the extent provided for
24 in the terms of the warrant itself, by the issuing court.

25 (D) Penalties. Any willful and unjustified refusal of right of entry and inspection to
26 department personnel pursuant to an administrative warrant shall constitute a contempt of court
27 and shall subject the refusing party to sanctions, which in the court's discretion may result in up to
28 six (6) months imprisonment and/or a monetary fine of up to ten thousand dollars (\$10,000) per
29 refusal.

30 (21) To give notice of an alleged violation of law to the person responsible therefor
31 whenever the director determines that there are reasonable grounds to believe that there is a
32 violation of any provision of law within his or her jurisdiction or of any rule or regulation adopted
33 pursuant to authority granted to him or her, unless other notice and hearing procedure is
34 specifically provided by that law. Nothing in this chapter shall limit the authority of the attorney

1 general to prosecute offenders as required by law;

2 (i) The notice shall provide for a time within which the alleged violation shall be
3 remedied, and shall inform the person to whom it is directed that a written request for a hearing
4 on the alleged violation may be filed with the director within ten (10) days after service of the
5 notice. The notice will be deemed properly served upon a person if a copy thereof is served him
6 or her personally; or sent by registered or certified mail to his or her last known address; or if he
7 or she is served with notice by any other method of service now or hereafter authorized in a civil
8 action under the laws of this state. If no written request for a hearing is made to the director
9 within ten (10) days of the service of notice, the notice shall automatically become a compliance
10 order;

11 (ii) (A) Whenever the director determines that there exists a violation of any law, rule, or
12 regulation within his or her jurisdiction that requires immediate action to protect the environment,
13 he or she may, without prior notice of violation or hearing, issue an immediate-compliance order
14 stating the existence of the violation and the action he or she deems necessary. The compliance
15 order shall become effective immediately upon service or within such time as is specified by the
16 director in such order. No request for a hearing on an immediate-compliance order may be made;

17 (B) Any immediate-compliance order issued under this section without notice and prior
18 hearing shall be effective for no longer than forty-five (45) days; provided, however, that for
19 good cause shown, the order may be extended one additional period not exceeding forty-five (45)
20 days.

21 (iii) The director may, at his or her discretion and for the purposes of timely and effective
22 resolution and return to compliance, cite a person for alleged noncompliance through the issuance
23 of an expedited citation in accordance with subsection 42-17.6-3(c);

24 (iv) If a person upon whom a notice of violation has been served under the provisions of
25 this section or if a person aggrieved by any such notice of violation requests a hearing before the
26 director within ten (10) days of the service of notice of violation, the director shall set a time and
27 place for the hearing, and shall give the person requesting that hearing at least five (5) days
28 written notice thereof. After the hearing, the director may make findings of fact and shall sustain,
29 modify, or withdraw the notice of violation. If the director sustains or modifies the notice, that
30 decision shall be deemed a compliance order and shall be served upon the person responsible in
31 any manner provided for the service of the notice in this section;

32 (v) The compliance order shall state a time within which the violation shall be remedied,
33 and the original time specified in the notice of violation shall be extended to the time set in the
34 order;

1 (vi) Whenever a compliance order has become effective, whether automatically where no
2 hearing has been requested, where an immediate compliance order has been issued, or upon
3 decision following a hearing, the director may institute injunction proceedings in the superior
4 court of the state for enforcement of the compliance order and for appropriate temporary relief,
5 and in that proceeding, the correctness of a compliance order shall be presumed and the person
6 attacking the order shall bear the burden of proving error in the compliance order, except that the
7 director shall bear the burden of proving in the proceeding the correctness of an immediate
8 compliance order. The remedy provided for in this section shall be cumulative and not exclusive
9 and shall be in addition to remedies relating to the removal or abatement of nuisances or any
10 other remedies provided by law;

11 (vii) Any party aggrieved by a final judgment of the superior court may, within thirty (30)
12 days from the date of entry of such judgment, petition the supreme court for a writ of certiorari to
13 review any questions of law. The petition shall set forth the errors claimed. Upon the filing of the
14 petition with the clerk of the supreme court, the supreme court may, if it sees fit, issue its writ of
15 certiorari.

16 (22) To impose administrative penalties in accordance with the provisions of chapter 17.6
17 of this title and to direct that such penalties be paid into the account established by subdivision
18 (26); and

19 (23) The following definitions shall apply in the interpretation of the provisions of this
20 chapter:

21 (i) Director: The term "director" shall mean the director of environmental management of
22 the state of Rhode Island or his or her duly authorized agent;

23 (ii) Person: The term "person" shall include any individual, group of individuals, firm,
24 corporation, association, partnership, or private or public entity, including a district, county, city,
25 town, or other governmental unit or agent thereof, and in the case of a corporation, any individual
26 having active and general supervision of the properties of such corporation;

27 (iii) Service: (A) Service upon a corporation under this section shall be deemed to include
28 service upon both the corporation and upon the person having active and general supervision of
29 the properties of such corporation;

30 (B) For purposes of calculating the time within which a claim for a hearing is made
31 pursuant to subdivision (21)(i), service shall be deemed to be the date of receipt of such notice or
32 three (3) days from the date of mailing of said notice, whichever shall first occur.

33 (24) (i) To conduct surveys of the present private and public camping and other
34 recreational areas available and to determine the need for and location of such other camping and

1 recreational areas as may be deemed necessary and in the public interest of the state of Rhode
2 Island and to report back its findings on an annual basis to the general assembly on or before
3 March 1 of every year;

4 (ii) Additionally, the director of the department of environmental management shall take
5 such additional steps, including, but not limited to, matters related to funding as may be necessary
6 to establish such other additional recreational facilities and areas as are deemed to be in the public
7 interest.

8 (25) (i) To apply for and accept grants and bequests of funds, with the approval of the
9 director of administration, from other states, interstate agencies, and independent authorities, and
10 private firms, individuals, and foundations, for the purpose of carrying out his or her lawful
11 responsibilities. The funds shall be deposited with the general treasurer in a restricted receipt
12 account created in the natural resources program for funds made available for that program's
13 purposes or in a restricted receipt account created in the environmental protection program for
14 funds made available for that program's purposes. All expenditures from the accounts shall be
15 subject to appropriation by the general assembly, and shall be expended in accordance with the
16 provisions of the grant or bequest. In the event that a donation or bequest is unspecified, or in the
17 event that the trust account balance shows a surplus after the project as provided for in the grant
18 or bequest has been completed, the director may utilize said appropriated unspecified or
19 appropriated surplus funds for enhanced management of the department's forest and outdoor
20 public recreation areas, or other projects or programs that promote the accessibility of recreational
21 opportunities for Rhode Island residents and visitors;

22 (ii) The director shall submit to the house fiscal advisor and the senate fiscal advisor, by
23 October 1 of each year, a detailed report on the amount of funds received and the uses made of
24 such funds.

25 (26) To establish fee schedules by regulation, with the approval of the governor, for the
26 processing of applications and the performing of related activities in connection with the
27 department's responsibilities pursuant to subdivision (12); chapter 19.1 of title 23, as it relates to
28 inspections performed by the department to determine compliance with chapter 19.1 and rules
29 and regulations promulgated in accordance therewith; chapter 18.9 of title 23, as it relates to
30 inspections performed by the department to determine compliance with chapter 18.9 and the rules
31 and regulations promulgated in accordance therewith; chapters 19.5 and 23 of title 23; chapter 12
32 of title 46, insofar as it relates to water-quality certifications and related reviews performed
33 pursuant to provisions of the federal Clean Water Act; the regulation and administration of
34 underground storage tanks and all other programs administered under chapter 12 of title 46 and §

1 2-1-18 et seq., and chapter 13.1 of title 46 and chapter 13.2 of title 46, insofar as they relate to
2 any reviews and related activities performed under the provisions of the Groundwater Protection
3 Act; chapter 24.9 of title 23 as it relates to the regulation and administration of mercury-added
4 products; and chapter 17.7 of this title, insofar as it relates to administrative appeals of all
5 enforcement, permitting and licensing matters to the administrative adjudication division for
6 environmental matters. Two (2) fee ranges shall be required: for "Appeal of enforcement
7 actions", a range of fifty dollars (\$50) to one hundred dollars (\$100), and for "Appeal of
8 application decisions", a range of five hundred dollars (\$500) to ten thousand dollars (\$10,000).
9 The monies from the administrative adjudication fees will be deposited as general revenues and
10 the amounts appropriated shall be used for the costs associated with operating the administrative
11 adjudication division.

12 There is hereby established an account within the general fund to be called the water and
13 air protection program. The account shall consist of sums appropriated for water and air pollution
14 control and waste-monitoring programs and the state controller is hereby authorized and directed
15 to draw his or her orders upon the general treasurer for the payment of such sums, or such
16 portions thereof, as may be required, from time to time, upon receipt by him or her of properly
17 authenticated vouchers. All amounts collected under the authority of this subdivision for the
18 sewage-disposal-system program and fresh-waters wetlands program will be deposited as general
19 revenues and the amounts appropriated shall be used for the purposes of administering and
20 operating the programs. The director shall submit to the house fiscal advisor and the senate fiscal
21 advisor by January 15 of each year a detailed report on the amount of funds obtained from fines
22 and fees and the uses made of such funds.

23 (27) To establish and maintain a list or inventory of areas within the state worthy of
24 special designation as "scenic" to include, but not be limited to, certain state roads or highways,
25 scenic vistas, and scenic areas, and to make the list available to the public;

26 (28) To establish and maintain an inventory of all interests in land held by public and
27 private land trust and to exercise all powers vested herein to insure the preservation of all
28 identified lands;

29 (i) The director may promulgate and enforce rules and regulations to provide for the
30 orderly and consistent protection, management, continuity of ownership and purpose, and
31 centralized records-keeping for lands, water, and open spaces owned in fee or controlled in full or
32 in part through other interests, rights, or devices such as conservation easements or restrictions,
33 by private and public land trusts in Rhode Island. The director may charge a reasonable fee for
34 filing of each document submitted by a land trust;

1 (ii) The term "public land trust" means any public instrumentality created by a Rhode
2 Island municipality for the purposes stated herein and financed by means of public funds
3 collected and appropriated by the municipality. The term "private land trust" means any group of
4 five (5) or more private citizens of Rhode Island who shall incorporate under the laws of Rhode
5 Island as a nonbusiness corporation for the purposes stated herein, or a national organization such
6 as the nature conservancy. The main purpose of either a public or a private land trust shall be the
7 protection, acquisition, or control of land, water, wildlife, wildlife habitat, plants, and/or other
8 natural features, areas, or open space for the purpose of managing or maintaining, or causing to
9 be managed or maintained by others, the land, water, and other natural amenities in any
10 undeveloped and relatively natural state in perpetuity. A private land trust must be granted
11 exemption from federal income tax under Internal Revenue Code 501c(3) [26 U.S.C. § 501(c)(3)]
12 within two (2) years of its incorporation in Rhode Island or it may not continue to function as a
13 land trust in Rhode Island. A private land trust may not be incorporated for the exclusive purpose
14 of acquiring or accepting property or rights in property from a single individual, family,
15 corporation, business, partnership, or other entity. Membership in any private land trust must be
16 open to any individual subscribing to the purposes of the land trust and agreeing to abide by its
17 rules and regulations including payment of reasonable dues;

18 (iii) (A) Private land trusts will, in their articles of association or their bylaws, as
19 appropriate, provide for the transfer to an organization, created for the same or similar purposes,
20 the assets, lands and land rights and interests held by the land trust in the event of termination or
21 dissolution of the land trust.

22 (B) All land trusts, public and private, will record in the public records, of the appropriate
23 towns and cities in Rhode Island, all deeds, conservation easements, or restrictions or other
24 interests and rights acquired in land and will also file copies of all such documents and current
25 copies of their articles of association, their bylaws, and annual reports with the secretary of state
26 and with the director of the Rhode Island department of environmental management. The director
27 is hereby directed to establish and maintain permanently a system for keeping records of all
28 private and public land trust land holdings in Rhode Island.

29 (29) The director will contact in writing, not less often than once every two (2) years,
30 each public or private land trust to ascertain: that all lands held by the land trust are recorded with
31 the director; the current status and condition of each land holding; that any funds or other assets
32 of the land trust held as endowment for specific lands have been properly audited at least once
33 within the two-year (2) period; the name of the successor organization named in the public or
34 private land trust's bylaws or articles of association; and any other information the director deems

1 essential to the proper and continuous protection and management of land and interests or rights
2 in land held by the land trust. In the event that the director determines that a public or private land
3 trust holding land or interest in land appears to have become inactive, he or she shall initiate
4 proceedings to effect the termination of the land trust and the transfer of its lands, assets, land
5 rights, and land interests to the successor organization named in the defaulting trust's bylaws or
6 articles of association or to another organization created for the same or similar purposes. Should
7 such a transfer not be possible, then the land trust, assets, and interest and rights in land will be
8 held in trust by the state of Rhode Island and managed by the director for the purposes stated at
9 the time of original acquisition by the trust. Any trust assets or interests other than land or rights
10 in land accruing to the state under such circumstances will be held and managed as a separate
11 fund for the benefit of the designated trust lands;

12 (30) Consistent with federal standards, issue and enforce such rules, regulations, and
13 orders as may be necessary to establish requirements for maintaining evidence of financial
14 responsibility for taking corrective action and compensating third parties for bodily injury and
15 property damage caused by sudden and non-sudden accidental releases arising from operating
16 underground storage tanks;

17 (31) To enforce, by such means as provided by law, the standards for the quality of air,
18 and water, and the location, design, construction, and operation of all underground storage
19 facilities used for storing petroleum products or hazardous materials; any order or notice issued
20 by the director relating to the location, design construction, operation, or maintenance of an
21 underground storage facility used for storing petroleum products or hazardous materials shall be
22 eligible for recordation under chapter 13 of title 34. The director shall forward the order or notice
23 to the city or town wherein the subject facility is located, and the order or notice shall be recorded
24 in the general index by the appropriate municipal officer in the land-evidence records in the city
25 or town wherein the subject facility is located. Any subsequent transferee of that facility shall be
26 responsible for complying with the requirements of the order or notice. Upon satisfactory
27 completion of the requirements of the order or notice, the director shall provide written notice of
28 the same, which notice shall be eligible for recordation. The original, written notice shall be
29 forwarded to the city or town wherein the subject facility is located, and the notice of satisfactory
30 completion shall be recorded in the general index by the appropriate municipal official in the
31 land-evidence records in the city or town wherein the subject facility is located. A copy of the
32 written notice shall be forwarded to the owner of the subject facility within five (5) days of a
33 request for it, and, in any event, shall be forwarded to the owner of the subject facility within
34 thirty (30) days after correction;

1 (32) To manage and disburse any and all funds collected pursuant to § 46-12.9-4, in
2 accordance with § 46-12.9-5, and other provisions of the Rhode Island Underground Storage
3 Tank Financial Responsibility Act, as amended;

4 (33) To support, facilitate, and assist the Rhode Island Natural History Survey, as
5 appropriate and/or as necessary, in order to accomplish the important public purposes of the
6 survey in gathering and maintaining data on Rhode Island natural history; making public
7 presentations and reports on natural history topics; ranking species and natural communities;
8 monitoring rare species and communities; consulting on open-space acquisitions and management
9 plans; reviewing proposed federal and state actions and regulations with regard to their potential
10 impact on natural communities; and seeking outside funding for wildlife management, land
11 management, and research;

12 (34) To promote the effective stewardship of lakes, ~~and~~ ponds, rivers and streams
13 including, but not limited to, including collaboration with watershed organizations and
14 associations of lakefront property owners on planning and management actions that will prevent
15 and mitigate water quality degradation, reduce the loss of native habitat due to infestation of non-
16 native species, ~~and~~ abate nuisance conditions that result from excessive growth of algal or non-
17 native plant species as well as promote healthy freshwater riverine ecosystems. By January 31,
18 ~~2012, the director shall prepare and submit a report to the governor and general assembly that,~~
19 ~~based upon available information, provides: (a) An assessment of lake conditions including a~~
20 ~~description of the presence and extent of aquatic invasive species in lakes and ponds; (b)~~
21 ~~Recommendations for improving the control and management of aquatic invasives species in~~
22 ~~lakes and ponds; and (c) An assessment of the feasibility of instituting a boat sticker program for~~
23 ~~the purpose of generating funds to support implementation actions to control aquatic invasive~~
24 ~~species in the freshwaters of the state; and~~

25 (35) In implementing the programs established pursuant to this chapter, to identify
26 critical areas for improving service to customers doing business with the department, and to
27 develop and implement strategies to improve performance and effectiveness in those areas. Key
28 aspects of a customer-service program shall include, but not necessarily be limited to, the
29 following components:

30 (a) Maintenance of an organizational unit within the department with the express purpose
31 of providing technical assistance to customers and helping customers comply with environmental
32 regulations and requirements;

33 (b) Maintenance of an employee-training program to promote customer service across the
34 department;

1 (c) Implementation of a continuous business process evaluation and improvement effort,
2 including process reviews to encourage development of quality proposals; ensure timely and
3 predictable reviews; and result in effective decisions and consistent follow up and implementation
4 throughout the department; and publish an annual report on such efforts;

5 (d) Creation of a centralized location for the acceptance of permit applications and other
6 submissions to the department;

7 (e) Maintenance of a process to promote, organize, and facilitate meetings prior to the
8 submission of applications or other proposals in order to inform the applicant on options and
9 opportunities to minimize environmental impact; improve the potential for sustainable
10 environmental compliance; and support an effective and efficient review and decision-making
11 process on permit applications related to the proposed project;

12 (f) Development of single permits under multiple authorities otherwise provided in state
13 law to support comprehensive and coordinated reviews of proposed projects. The director may
14 address and resolve conflicting or redundant process requirements in order to achieve an effective
15 and efficient review process that meets environmental objectives; and

16 (g) Exploration of the use of performance-based regulations coupled with adequate
17 inspection and oversight, as an alternative to requiring applications or submissions for approval
18 prior to initiation of projects. The department shall work with the office of regulatory reform to
19 evaluate the potential for adopting alternative compliance approaches and provide a report to the
20 governor and the general assembly by May 1, 2015.

21 **42-17.1-4. Divisions within department.**

22 Within the department of environmental management there are established the following
23 divisions:

24 (1) A division of parks and recreation that shall carry out those functions of the
25 department relating to the operation and maintenance of parks and recreation areas and the
26 establishment and maintenance of such additional recreation areas as may from time to time be
27 acquired and such other functions and duties as may from time to time be assigned by the
28 director;

29 (2) A division of fish and wildlife that shall carry out those functions of the department
30 relating to the administration of hunting, fishing, and shell fisheries; the preservation of wetlands,
31 marsh lands, [freshwater lakes, streams, ponds](#), and wildlife; and such other functions and duties
32 as may from time to time be assigned by the director;

33 (3) A division of agriculture that shall carry out those functions of the department relating
34 to agriculture, and such other functions and duties as may from time to time be assigned by the

1 director, including, but not limited to, plant industry, farm viability, marketing and promotion,
2 farmland ecology and protection, plant and animal health and quarantine, pesticides, mosquito
3 abatement, pest survey and response, food policy and security, and, in collaboration with the
4 department of health, public health as it relates to farm production and direct marketing of farm
5 products, and those agreed upon through memorandum of agreement with the department of
6 health or other state agencies. The department of health shall continue to act as the lead agency
7 for all public health issues in the state pursuant to chapter 1 of title 23. Nothing herein contained
8 shall limit the department of health's statutory authority, nor shall any provision herein be
9 construed as a limitation upon the statutory authority of the department of health granted to the
10 department under title 23 of the general laws, nor shall any provision herein be construed to limit
11 the authority of the department of environmental management to enter into memoranda of
12 agreement with any governmental agency. The chief of the division of agriculture shall report
13 directly to the director.

14 (4) A division of coastal resources that shall carry out those functions of the department
15 relating to harbors and harbor lines, pilotage, flood control, shore development, construction of
16 port facilities, and the registration of boats and such other functions and duties as may, from time
17 to time, be assigned by the director, except that the division shall not be responsible for the
18 functions of inspection of dams and reservoirs, approving plans for construction or improvement
19 of dams, reservoirs, and other structures in non-tidal waters, and the operation of stream-gauging
20 stations in cooperation with the United States Geological Survey, and provided, further, that the
21 division and its staff shall be responsible through the director of environmental management, to
22 the coastal resources management council, and the chief and the staff of the division shall serve
23 as staff to the council;

24 (5) A division of planning and development that shall carry out those functions of the
25 department relating to planning, programming, acquisition of land, engineering studies, and such
26 other studies, as the director may direct, and that shall work with the board of governors for
27 higher education and the board of regents for elementary and secondary education, with
28 educational institutions at all levels, and with the public in the dissemination of information and
29 education relating to natural resources, and shall perform the publication and public relations
30 functions of the department, the functions of inspection of dams and reservoirs, approving plans
31 for construction or improvement of dams, reservoirs, and other structures in non-tidal waters, and
32 the operation of stream-gauging stations in cooperation with the United States Geological Survey;

33 (6) A division of enforcement that shall enforce all of the laws and regulations of the
34 department and the coastal resources management council, that shall cooperate with the other

1 enforcement agencies of the state and its municipalities, and that shall administer all of the
2 policing, enforcing, licensing, registration, and inspection functions of the department and such
3 other functions and duties as may, from time to time, be assigned by the director;

4 (7) A division of forest environment that shall carry out those functions of the department
5 relating to the administration of forests and natural areas, including programs for utilization,
6 conservation, forest fire protection, and improvements of these areas; assisting other agencies and
7 local governments in urban programs relating to trees, forests, green belts, and environment and
8 such other functions and duties as may, from time to time, be assigned by the director; and

9 (8) (i) A division of boating safety that shall carry out those functions of the department
10 relating to the development and administration of a coordinated, safe boating program in
11 accordance with the Model Safe Boating Act of 1971 as approved by the National Association of
12 State Boating Law Administrators.

13 (ii) Administration of the division of boating safety shall be the responsibility of the state
14 boating law administrator whose duties shall include:

15 (A) The enforcement of all laws relating to the act; and

16 (B) The powers vested in the state boating law administrator and boating safety
17 enforcement officer shall include the enforcement of laws, rules and regulations relating to
18 "Regulation of Boats," chapter 22 of title 46 and shall also include the power to:

19 (I) Execute all warrants and search warrants for the violation of laws, rules, and
20 regulations relating to the act.

21 (II) Serve subpoenas issued for the trial of all offenses hereunder.

22 (III) To carry firearms or other weapons, concealed or otherwise, in the course of, and in
23 performance of, their duties under this chapter.

24 (IV) To arrest without warrant and on view any person found violating any law, rule, or
25 regulation relating to the act; take that person before a court having jurisdiction for trial; detain
26 that person in custody at the expense of the state until arraignment; and to make and execute
27 complaints within any district to the justice or clerk of the court against any person for any of the
28 offenses enumerated under the act committed within the district.

29 (V) Boating safety enforcement officers shall not be required to give surety for costs
30 upon any complaint made by him or her.

31 (iii) The development and administration of a coordinated, safe boating program.

32 (iv) The establishment and enforcement of such rules and regulations as are deemed
33 necessary to achieve the purposes of the Model Safe Boating Act as approved by the state boating
34 law administrators.

- 1 (v) The state boating law administrator shall serve as the liaison to the United States
2 Coast Guard.
3 SECTION 2. This act shall take effect upon passage.

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LC000385/SUB A
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT - DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

- 1 This act would place oversight of freshwater lakes, streams, and ponds in the fish and
- 2 wildlife division of the department of environmental management.
- 3 This act would take effect upon passage.

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LC000385/SUB A
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