

2023 -- S 0319

LC001208

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2023

A N A C T

RELATING TO WATERS AND NAVIGATION -- SHORE DEVELOPMENT

Introduced By: Senators LaMountain, Miller, and Gu

Date Introduced: February 16, 2023

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 46-3 of the General Laws entitled "Shore Development" is hereby  
2 amended by adding thereto the following section:

3 **46-3-21. Authority to recognize and identify public rights-of-way to shoreline and**  
4 **water access.**

5 (a) The director of the department of environmental management (the "director") shall have  
6 full and complete authority to recognize and identify public rights-of-way to shoreline and water  
7 access ("rights-of-way") over land owned by a private party, pursuant to this section.

8 (b) In cases where a trail or pathway to a beach area, or to a river or other waterway that  
9 empties into Narragansett Bay or the Atlantic Ocean, has been purchased by a private party, and  
10 subsequent to that purchase, the private party prohibits public access to that trail or pathway, the  
11 director may, within three (3) years after the date of such purchase, recognize and identify public  
12 rights-of-way to shoreline and water access upon finding the following:

13 (1) The trail or pathway leads to a beach area or to a river or other waterway that empties  
14 into Narragansett Bay or the Atlantic Ocean;

15 (2) That the trail or pathway has previously been recognized and used by the public for  
16 shoreline and water access, and that such access has been by foot traffic for a period of at least ten  
17 (10) years of uninterrupted use by the public prior to the private party prohibiting access to the trail  
18 or pathway; and

19 (3) That designation of such trail or pathway as a public rights-of-way to shoreline and

1 water access shall not cause an undue hardship upon the owner of the property.

2 (c) The existence of a public or utility easement along the trail or pathway shall be further  
3 evidence in support of a finding that the trail or pathway is a rights-of-way to shoreline and water  
4 access.

5 (d) In designating rights-of-way pursuant to this section, the director shall consider the  
6 following matters in making that designation:

7 (1) Land evidence records;  
8 (2) The exercise of domain over the parcel such as maintenance, construction, or upkeep;  
9 (3) The payment of taxes;  
10 (4) The creation of a dedication;  
11 (5) Public use;  
12 (6) Any other public record or historical evidence such as maps and street indexes.

13 (e) The director shall provide in writing to the owner of any real property which the director  
14 recognizes and identifies a public rights-of-way to shoreline and water access as passing over, a  
15 copy of the directors' decision. This decision shall also be recorded in the land evidence records of  
16 any and all municipalities which the rights-of-way is identified as being located in. The decision  
17 shall be dated, and all owners of the property shall be provided a copy of the decision pursuant to  
18 this subsection within ten (10) days of the issuance of the decision.

19 (f) A person owning property upon which a trail or pathway is identified and recognized  
20 by the director as a public rights-of-way and claiming to be adversely impacted by the action of the  
21 director under this section, may appeal the decision of the director pursuant to the provisions of §§  
22 42-35-15, et seq., of the administrative procedures act.

23 (g) Recognition and identification of public rights-of-way pursuant to this section is not a  
24 condemnation or taking.

25 (h) The provisions of this section shall not apply to any land that is subject to a pending  
26 rights-of-way action by the coastal resources management council pursuant (the "council")  
27 pursuant to chapter 23 of title 46. In the event the council initiates an action to designate a public  
28 rights-of-way on any land pursuant to § 46-23-6, that action shall take precedence over any action  
29 or determination of the director to recognize a public rights-of-way to shoreline and water access  
30 pursuant to this section.

31 (i) A trail or pathway identified as a public rights-of-way to shoreline and water access  
32 pursuant to this section shall not be used for motor vehicle traffic, except that the provisions of this  
33 section shall not be construed to limit, impact, or restrict any access by police, fire, rescue, and  
34 similar public safety vehicles to any area.

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

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
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RELATING TO WATERS AND NAVIGATION -- SHORE DEVELOPMENT

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1           This act would permit the director of the department of environmental management to  
2 recognize and identify public rights-of-way to shoreline and water access over land owned by a  
3 private party. An owner of property so identified would have a right to appeal pursuant to the  
4 administrative procedures act. In the event the coastal resources management council initiates an  
5 action to designate a public rights-of-way on any land pursuant to § 46-23-6, that action would take  
6 precedence over any action or determination of the director to recognize a public rights-of-way to  
7 shoreline and water access pursuant to this act.

8           This act would take effect upon passage.

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