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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2022

A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT -- DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

Introduced By: Senators McCaffrey, Anderson, Mack, Calkin, and DiMario

Date Introduced: April 05, 2022

Referred To: Senate Environment & Agriculture

It is enacted by the General Assembly as follows:

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


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

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

(2) To exercise all functions, powers, and duties heretofore vested in the department of agriculture and conservation, and in each of the divisions of the department, such as the promotion of agriculture and animal husbandry in their several branches, including the inspection and suppression of contagious diseases among animals; the regulation of the marketing of farm products; the inspection of orchards and nurseries; the protection of trees and shrubs from injurious insects and diseases; protection from forest fires; the inspection of apiaries and the suppression of contagious diseases among bees; the prevention of the sale of adulterated or misbranded agricultural seeds; promotion and encouragement of the work of farm bureaus, in cooperation with the University of Rhode Island, farmers' institutes, and the various organizations established for the purpose of developing an interest in agriculture; together with such other agencies and activities as
the governor and the general assembly may, from time to time, place under the control of the
department; and as heretofore vested by such of the following chapters and sections of the general
laws as are presently applicable to the department of environmental management and that were
previously applicable to the department of natural resources and the department of agriculture and
conservation or to any of its divisions: chapters 1 through 22, inclusive, as amended, in title 2
entitled "Agriculture and Forestry"; chapters 1 through 17, inclusive, as amended, in title 4 entitled
"Animals and Animal Husbandry"; chapters 1 through 19, inclusive, as amended, in title 20 entitled
"Fish and Wildlife"; chapters 1 through 32, inclusive, as amended, in title 21 entitled "Food and
Drugs"; chapter 7 of title 23, as amended, entitled "Mosquito Abatement"; and by any other general
or public law relating to the department of agriculture and conservation or to any of its divisions or
bureaus; no powers or duties granted herein shall be construed to abrogate the powers or duties
granted to the natural heritage preservation commission under chapter 17.5 of title 42 and chapter
122 of title 42, as amended;

(3) To exercise all the functions, powers, and duties heretofore vested in the division of
parks and recreation of the department of public works by chapters 1, 2, and 5 in title 32 entitled
"Parks and Recreational Areas"; by chapter 22.5 of title 23, as amended, entitled "Drowning
Prevention and Lifesaving"; and by any other general or public law relating to the division of parks
and recreation; no powers or duties granted herein shall be construed to abrogate the powers or
duties granted to the natural heritage preservation commission under chapter 17.5 of title 42 and
chapter 122 of title 42, as amended;

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

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

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

(7) To cooperate with, advise, and guide conservation commissions of cities and towns created under chapter 35 of title 45 entitled "Conservation Commissions", as enacted by chapter 203 of the Public Laws, 1960;

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

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

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

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

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

(13) To enforce, by such means as provided by law, the standards for the quality of air, and water, and the design, construction, and operation of all sewage-disposal systems; any order or notice issued by the director relating to the location, design, construction, or maintenance of a
sewage-disposal system shall be eligible for recordation under chapter 13 of title 34. The director shall forward the order or notice to the city or town wherein the subject property is located and the order or notice shall be recorded in the general index by the appropriate municipal official in the land evidence records in the city or town wherein the subject property is located. Any subsequent transferee of that property shall be responsible for complying with the requirements of the order or notice. Upon satisfactory completion of the requirements of the order or notice, the director shall provide written notice of the same, which notice shall be similarly eligible for recordation. The original written notice shall be forwarded to the city or town wherein the subject property is located and the notice of satisfactory completion shall be recorded in the general index by the appropriate municipal official in the land evidence records in the city or town wherein the subject property is located. A copy of the written notice shall be forwarded to the owner of the subject property within five (5) days of a request for it, and, in any event, shall be forwarded to the owner of the subject property within thirty (30) days after correction;

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

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

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

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

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

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

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

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

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

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

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

(I) For closely regulated industries;

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

(III) In emergency situations;

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

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

(VI) In other situations in which a warrant is not constitutionally required.
(C) Whenever it shall be constitutionally or otherwise required by law, or whenever the
director in his or her discretion deems it advisable, an administrative search warrant, or its
functional equivalent, may be obtained by the director from a neutral magistrate for the purpose of
conducting an administrative inspection. The warrant shall be issued in accordance with the
applicable constitutional standards for the issuance of administrative search warrants. The
administrative standard of probable cause, not the criminal standard of probable cause, shall apply
to applications for administrative search warrants;

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

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

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

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

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

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

(21) To give notice of an alleged violation of law to the person responsible therefor
whenever the director determines that there are reasonable grounds to believe that there is a
violation of any provision of law within his or her jurisdiction or of any rule or regulation adopted
pursuant to authority granted to him or her. Nothing in this chapter shall limit the authority of the
attorney general to prosecute offenders as required by law;

(i) The notice shall provide for a time within which the alleged violation shall be remedied,
and shall inform the person to whom it is directed that a written request for a hearing on the alleged
violation may be filed with the director within twenty (20) days after service of the notice. The
notice will be deemed properly served upon a person if a copy thereof is served him or her
personally; or sent by registered or certified mail to his or her last known address; or if he or she is
served with notice by any other method of service now or hereafter authorized in a civil action
under the laws of this state. If no written request for a hearing is made to the director within twenty
(20) days of the service of notice, the notice shall automatically become a compliance order;

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

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

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

(iv) If a person upon whom a notice of violation has been served under the provisions of
this section or if a person aggrieved by any such notice of violation requests a hearing before the
director within twenty (20) days of the service of notice of violation, the director shall set a time
and place for the hearing, and shall give the person requesting that hearing at least five (5) days'
written notice thereof. After the hearing, the director may make findings of fact and shall sustain,
modify, or withdraw the notice of violation. If the director sustains or modifies the notice, that
decision shall be deemed a compliance order and shall be served upon the person responsible in
any manner provided for the service of the notice in this section;

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

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

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

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

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

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

(ii) Person: The term "person" shall include any individual, group of individuals, firm,
corporation, association, partnership, or private or public entity, including a district, county, city,
town, or other governmental unit or agent thereof, and in the case of a corporation, any individual
having active and general supervision of the properties of the corporation; (iii) Service: (A)
Service upon a corporation under this section shall be deemed to include service upon both
the corporation and upon the person having active and general supervision of the properties of the
corporation;

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

(24)(i) To conduct surveys of the present private and public camping and other recreational
areas available and to determine the need for and location of other camping and recreational areas
as may be deemed necessary and in the public interest of the state of Rhode Island and to report
back its findings on an annual basis to the general assembly on or before March 1 of every year;
(ii) Additionally, the director of the department of environmental management shall take additional steps, including, but not limited to, matters related to funding as may be necessary to establish such other additional recreational facilities and areas as are deemed to be in the public interest;

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

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

(26) To establish fee schedules by regulation, with the approval of the governor, for the processing of applications and the performing of related activities in connection with the department's responsibilities pursuant to subsection (12); chapter 19.1 of title 23, as it relates to inspections performed by the department to determine compliance with chapter 19.1 and rules and regulations promulgated in accordance therewith; chapter 18.9 of title 23, as it relates to inspections performed by the department to determine compliance with chapter 18.9 and the rules and regulations promulgated in accordance therewith; chapters 19.5 and 23 of title 23; chapter 12 of title 46, insofar as it relates to water-quality certifications and related reviews performed pursuant to provisions of the federal Clean Water Act, 33 U.S.C. § 1251 et seq.; the regulation and administration of underground storage tanks and all other programs administered under chapter 12 of title 46 and § 2-1-18 et seq., and chapter 13.1 of title 46 and chapter 13.2 of title 46, insofar as they relate to any reviews and related activities performed under the provisions of the Groundwater Protection Act; chapter 24.9 of title 23 as it relates to the regulation and administration of mercury-
added products; and chapter 17.7 of this title, insofar as it relates to administrative appeals of all
enforcement, permitting and licensing matters to the administrative adjudication division for
environmental matters. Two (2) fee ranges shall be required: for "Appeal of enforcement actions,"
a range of fifty dollars ($50) to one hundred dollars ($100), and for "Appeal of application
decisions," a range of five hundred dollars ($500) to ten thousand dollars ($10,000). The monies
from the administrative adjudication fees will be deposited as general revenues and the amounts
appropriated shall be used for the costs associated with operating the administrative adjudication
division.

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

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

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

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

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

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

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

(29) The director will contact in writing, not less often than once every two (2) years, each public or private land trust to ascertain: that all lands held by the land trust are recorded with the director; the current status and condition of each land holding; that any funds or other assets of the land trust held as endowment for specific lands have been properly audited at least once within the two-year (2) period; the name of the successor organization named in the public or private land trust's bylaws or articles of association; and any other information the director deems essential to the proper and continuous protection and management of land and interests or rights in land held by the land trust. In the event that the director determines that a public or private land trust holding land or interest in land appears to have become inactive, he or she shall initiate proceedings to
effect the termination of the land trust and the transfer of its lands, assets, land rights, and land
interests to the successor organization named in the defaulting trust’s bylaws or articles of
association or to another organization created for the same or similar purposes. Should such a
transfer not be possible, then the land trust, assets, and interest and rights in land will be held in
trust by the state of Rhode Island and managed by the director for the purposes stated at the time
of original acquisition by the trust. Any trust assets or interests other than land or rights in land
accruing to the state under such circumstances will be held and managed as a separate fund for the
benefit of the designated trust lands;

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

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

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

(33) To support, facilitate, and assist the Rhode Island Natural History Survey, as
appropriate and/or as necessary, in order to accomplish the important public purposes of the survey
in gathering and maintaining data on Rhode Island natural history; making public presentations and
reports on natural history topics; ranking species and natural communities; monitoring rare species
and communities; consulting on open-space acquisitions and management plans; reviewing
proposed federal and state actions and regulations with regard to their potential impact on natural
communities; and seeking outside funding for wildlife management, land management, and
research;
(34) To promote the effective stewardship of lakes, ponds, rivers, and streams including,
but not limited to, collaboration with watershed organizations and associations of lakefront property
owners on planning and management actions that will prevent and mitigate water quality
degradation, reduce the loss of native habitat due to infestation of non-native species, abate
nuisance conditions that result from excessive growth of algal or non-native plant species as well
as promote healthy freshwater riverine ecosystems;
(35) In implementing the programs established pursuant to this chapter, to identify critical
areas for improving service to customers doing business with the department, and to develop and
implement strategies to improve performance and effectiveness in those areas. Key aspects of a
customer-service program shall include, but not necessarily be limited to, the following
components:
(i) Maintenance of an organizational unit within the department with the express purpose
of providing technical assistance to customers and helping customers comply with environmental
regulations and requirements;
(ii) Maintenance of an employee-training program to promote customer service across the
department;
(iii) Implementation of a continuous business process evaluation and improvement effort,
including process reviews to encourage development of quality proposals; ensure timely and
predictable reviews; and result in effective decisions and consistent follow up and implementation
throughout the department; and publish an annual report on such efforts;
(iv) Creation of a centralized location for the acceptance of permit applications and other
submissions to the department;
(v) Maintenance of a process to promote, organize, and facilitate meetings prior to the
submission of applications or other proposals in order to inform the applicant on options and
opportunities to minimize environmental impact; improve the potential for sustainable
environmental compliance; and support an effective and efficient review and decision-making
process on permit applications related to the proposed project;
(vi) Development of single permits under multiple authorities otherwise provided in state law to support comprehensive and coordinated reviews of proposed projects. The director may address and resolve conflicting or redundant process requirements in order to achieve an effective and efficient review process that meets environmental objectives; and

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

(36) To formulate and promulgate regulations requiring any dock or pier longer than twenty feet (20') and located on a freshwater lake or pond to be equipped with reflective materials, on all sides facing the water, of an appropriate width and luminosity such that it can be seen by operators of watercraft; and

(37) To temporarily waive any control or prohibition respecting the use of a fuel or fuel additive required or regulated by the department if the director finds that:

(i) Extreme or unusual fuel or fuel additive supply circumstances exist in the state or the New England region that prevent the distribution of an adequate supply of the fuel or fuel additive to consumers;

(ii) Extreme or unusual fuel or fuel additive supply circumstances are the result of a natural disaster, an act of God, a pipeline or refinery equipment failure, or another event that could not reasonably have been foreseen; and

(iii) It is in the public interest to grant the waiver.

Any temporary waiver shall be made in writing and shall be effective for twenty (20) calendar days; provided, that the director may renew the temporary waiver, in writing, if it is deemed necessary.

42-17.1-4. Divisions within department.

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

(1) A division of parks and recreation that shall carry out those functions of the department relating to the operation and maintenance of parks and recreation areas and the establishment and maintenance of such additional recreation areas as may from time to time be acquired and such other functions and duties as may, from time to time, be assigned by the director; no powers or duties granted herein shall be construed to abrogate the powers or duties granted to the natural heritage preservation commission under chapter 17.5 of title 42 and chapter 122 of title 42, as
amended;

(2) A division of fish and wildlife management that shall carry out those functions of the
department relating to the administration and management of hunting and freshwater fishing; the
preservation of wetlands, marsh lands, freshwater lakes, streams, ponds, and wildlife; and such
other related functions and duties as may be assigned by the director; no powers or duties granted
herein shall be construed to abrogate the powers or duties granted to the natural heritage
preservation commission under chapter 17.5 of title 42 and chapter 122 of title 42, as amended;

(3) A division of agriculture that shall carry out those functions of the department relating
to agriculture, and such other functions and duties as may from time to time be assigned by the
director, including, but not limited to, plant industry, farm viability, marketing and promotion,
farmland ecology and protection, plant and animal health and quarantine, pesticides, mosquito
abatement, pest survey and response, food policy and security, and, in collaboration with the
department of health, public health as it relates to farm production and direct marketing of farm
products, and those agreed upon through memorandum of agreement with the department of health
or other state agencies. The department of health shall continue to act as the lead agency for all
public health issues in the state pursuant to chapter 1 of title 23. Nothing herein contained shall
limit the department of health's statutory authority, nor shall any provision herein be construed as
a limitation upon the statutory authority of the department of health granted to the department under
title 23, nor shall any provision herein be construed to limit the authority of the department of
environmental management to enter into memoranda of agreement with any governmental agency.
The chief of the division of agriculture shall report directly to the director; no powers or duties
granted herein shall be construed to abrogate the powers or duties granted to the natural heritage
preservation commission under chapter 17.5 of title 42 and chapter 122 of title 42, as amended;

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

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

(6) A division of enforcement that shall enforce all of the laws and regulations of the
department and the coastal resources management council, that shall cooperate with the other
enforcement agencies of the state and its municipalities, and that shall administer all of the policing,
ensuring, licensing, registration, and inspection functions of the department and such other
functions and duties as may, from time to time, be assigned by the director;

(7) A division of forest environment that shall carry out those functions of the department
relating to the administration of forests and natural areas, including programs for utilization,
conservation, forest fire protection, and improvements of these areas; assisting other agencies and
local governments in urban programs relating to trees, forests, green belts, and environment and
such other functions and duties as may, from time to time, be assigned by the director; no powers
or duties granted herein shall be construed to abrogate the powers or duties granted to the natural
heritage preservation commission under chapter 17.5 of title 42 and chapter 122 of title 42, as
amended;

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

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

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

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

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

(II) Serve subpoenas issued for the trial of all offenses hereunder.
(III) To carry firearms or other weapons, concealed or otherwise, in the course of, and in performance of, their duties under this chapter.

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

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

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

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

(v) The state boating law administrator shall serve as the liaison to the United States Coast Guard; and

(9) A division of marine fisheries management that shall carry out those functions of the department relating to the administration, management, and harvest of marine animal and plant species found in Rhode Island marine waters, including, but not limited to: stock assessments of marine species; harvest of marine species regulated under a regional federal fisheries management plan; the review of aquaculture applications before the CRMC; a commercial fishing licensing program; fixing seasons, bag limits, size limits, possession limits, and methods of taking on any marine plant and animal species; and such other related functions and duties as may be assigned by the director.

SECTION 2. Sections 42-17.5-4 and 42-17.5-5 of the General Laws in Chapter 42-17.5 entitled "Natural Heritage Preservation Program" are hereby amended to read as follows:

42-17.5-4. Natural heritage preservation commission.

(a)(1) There is established within the department of environmental management the natural heritage preservation commission consisting of the directors of the department of environmental management (who shall be chairperson) and the governor's office of intergovernmental relations, and the chief of the division of statewide planning, department of administration ten (10) members. Nine (9) members shall be appointed by the governor, with advice and consent of the senate. No less than three (3) commission members shall be environmental scientists. The commission shall include representation from the Rhode Island Natural History Survey and the Old Growth Tree Society.
(2) The members shall serve for terms of five (5) years each.

(3) Any vacancy occurring otherwise than by expiration of term shall be filled in the same manner as the original appointment.

(4) Upon expiration of a member's term, that member shall continue as a member until that member's successor is appointed and qualified. Any person serving a term shall be eligible for appointment.

(b) No member shall receive compensation for the performance of his or her duties as a member; provided, however, that each appointed member may be reimbursed if funds are appropriated for his or her actual and necessary expenses incurred during the performance of his or her official duties.

(c)(1) The commission shall designate annually from its members a chairperson and a vice chairperson.

(2) Whenever public hearings are required under this chapter, or whenever the commission determines a public hearing is appropriate, the commission shall use reasonable efforts to hold those hearings at a place or places that will reasonably accommodate the interested parties.

(3) Six (6) voting members of the commission shall constitute a quorum for the transaction of any business or the exercise of any power of the commission. Except as otherwise provided in this chapter, the commission shall have the power to act by a majority of the members present at any meeting at which a quorum is in attendance.

(d) A commission member may be removed for cause or misconduct in office only after the majority of the commission members vote in favor of the removal, after giving him or her a copy of the charges against him or her and an opportunity to be heard, in person or by counsel, in his or her defense, upon not less than ten (10) days' notice. If any member shall be removed, the chair or vice chair shall file in the office of the secretary of state a complete statement of charges made against the member and his or her findings, together with a complete record of the proceedings.

(e) The natural heritage preservation commission shall have the authority to establish subcommittees to fulfill the purposes of the commission.

(f) The director of the department of environmental management, or designee, shall serve ex officio.

42-17.5-5. Powers and duties of commission.

(a) The commission shall have power to:

(1) The primary responsibility of the natural heritage preservation commission shall be the preservation and management of the state's natural area preserves. The commission shall be able to
make any studies of conditions, activities, or problems of the state's natural area preserves needed
to carry out its responsibilities;

(2) Identify all of the state's old growth forests, rare forest ecosystems, and if possible, all
areas of most environmentally sensitive land and/or water containing habitat suitable for plant or
animal life or geological features of biological, scientific, educational, geological, paleontological,
or scenic value worthy of preservation in its natural condition, and so forth;

(3) Conduct such hearings, examinations, and investigations as may be necessary and
appropriate to the conduct of its operations and the fulfillment of its responsibilities;

(4) Obtain access to public records and apply for the process of subpoena, if necessary,
to produce books, papers, records, and other data;

(5) Retain by contract or employ counsel, auditors, engineers, appraisers, private
consultants and advisors, or other personnel needed to provide necessary services;

(6) Serving as the lead state agency and initial and primary point of contact for old growth
forests, rare forest ecosystems, and areas of most environmentally sensitive land and/or water
containing habitat suitable for plant or animal life or geological features of biological, scientific,
educational, geological, paleontological, or scenic value worthy of preservation in its natural
condition;

(7) The natural heritage preservation commission shall have exclusive jurisdiction over the
natural area preserves;

(8) The natural heritage preservation commission is authorized to formulate policies and
plans and to adopt regulations necessary to implement its protections of old growth forests, rare
forest ecosystems, and areas of most environmentally sensitive land and/or water containing habitat
suitable for plant or animal life or geological features of biological, scientific, educational,
geological, paleontological, or scenic value worthy of preservation in its natural condition in the
natural areas preserves. This shall include establishing a definition for old growth forests;

(9) Set policies for the disbursement and repayment of loans from the natural heritage
preservation revolving fund;

(10) Accept on behalf of the state, gifts, grants, or loans of funds, personal or real
property, or services from any source, public or private, and comply, subject to the provisions of
this chapter, with the terms and conditions thereof; and

(11) Accept, from a federal agency, loans or grants for use in carrying out its purposes
and enter into agreement with the agency respecting any such loans or grants.

(b) The commission shall select from loan applicants those which meet all eligibility
criteria and which the commission deems to be the most worthy of financing and shall make loans
to such applicants. (c) The commission, consistent with the Administrative Procedures Act, chapter 35 of this title, shall:

(1) Develop criteria necessary for defining eligibility for loans;
(2) Prepare and adopt rules and regulating loan generation, disbursement, loan repayment, and mortgage covenants; and
(3) Establish procedures consistent with the purposes of this chapter to insure the long term preservation of irreplaceable open land resources and their passive recreational use by the public.

SECTION 3. The title of Chapter 42-122 of the General Laws entitled "Natural Areas Protection Act of 1993" is hereby amended to read as follows:

CHAPTER 42-122
Natural Areas Protection Act of 1993

CHAPTER 42-122
NATURAL AREAS PROTECTION ACT

SECTION 4. Sections 42-122-1, 42-122-3, 42-122-4, 42-122-5, 42-122-6 and 42-122-7 of the General Laws in Chapter 42-122 entitled "Natural Areas Protection Act of 1993" are hereby amended to read as follows:

42-122-1. Title.
This chapter shall be titled the "Natural Areas Protection Act of 1993".

As used in this chapter:
(1) "Director" means the director of the department of environmental management of the state of Rhode Island. "Forestry operation" means any cutting, timber harvesting, girdling, or any alteration to a forest which is over one acre in size.
(2) "Natural area preserve" means areas of most environmentally sensitive land and/or water containing habitat suitable for plant or animal life or geological features of biological, scientific, educational, geological, paleontological, or scenic value worthy of preservation in its natural condition which has been approved by the director natural heritage preservation commission.
(3) "Natural heritage preservation commission" means the natural heritage preservation commission established under § 42-17.5-4.

The director natural heritage preservation commission shall establish a system of natural area preserves and shall have the responsibility as set forth in this chapter for selection of all natural
area preserves within the system, and shall ensure that these preserves are maintained in as natural
and wild a state as is consistent with educational, scientific, biological, geological, paleontological,
and scenic purposes. The director natural heritage preservation commission shall ensure the use of
natural area preserves for research and other purposes consistent with the intent of this chapter. The
director natural heritage preservation commission may adopt regulations for establishing and
managing the natural area preserve system including, but not limited to, procedures for the adoption
and revision of a management plan for each designated natural area preserve.

42-122-5. Procedure for designation of non-state owned land as a natural area
preserve.

(a) The director natural heritage preservation commission may approve non-state owned
land as a natural area preserve only upon the recommendation of the natural heritage preservation
commission (established under § 42-17.5-4) and only after a public hearing and upon notice. The
notice required under this section shall set forth a description of the proposed action, including a
description of the land to be offered, and the time and place of the hearing. The notice shall conform
to the requirements of § 42-35-1 et seq.

(b) The natural heritage preservation commission shall review requests from
municipalities, private land conservation organizations, and private landowners desiring
designation of a parcel of land as a natural area preserve, and make recommendations to the
director. Any request must include the written consent of the private landowner before any review
shall commence. In making recommendations designations, it shall be guided by the natural
heritage program and other relevant sources of information about critical environmental resources.
The natural heritage preservation commission may also, on its own initiative, make
recommendations for designation of areas to the director.

(c) To be designated a natural area preserve the property owner must voluntarily grant to
the state of Rhode Island a conservation easement, which shall include the reasons for the
designation, and prepare a management plan for the preserve that defines the methods by which the
educational, scientific, biological, geological, paleontological, and/or scenic purposes of the
designation shall be carried out. The conservation easement shall be recorded in the land evidence
records in the city or town where the parcel is located.

(d) In areas under the jurisdiction of the coastal resource management council (CRMC),
the director natural heritage preservation commission shall coordinate with the CRMC areas to be
proposed for inclusion within the program.


(a) A request for designation of state-owned land as a natural area preserve shall be made
to the director natural heritage preservation commission, that request specifying the area to be
designated, the reasons for the designation, the proposed management strategy necessary to protect
the critical environmental resources within the area, and the changes that would be required in
current management practices. The request for designation may be made by the director of any state
agency for any parcel of land under the agency's control, but this is not a requirement. The natural
heritage preservation commission shall review requests from private land conservation
organizations and private individuals desiring designation of a parcel of state-owned land as a
natural area preserve.

(b) The director natural heritage preservation commission may approve the designation of
state-owned land as a preserve only after consultation with the managing agency, and after a public
hearing. Notice requirements for the public hearing shall be the same as required under § 42-122-5(a). Before a preserve is designated, a management plan must be approved by the director and
adopted by the department managing the preserve natural heritage preservation commission.


An area designated as a natural area preserve is declared to be put to its highest, best and
most important use for public benefit and no interest in this preserve owned by the state shall be
alienated or put to any use other than as a natural area preserve, except upon a finding by the director
in consultation with the natural heritage preservation commission, that the qualifying features of
the land have been destroyed or irretrievably damaged and that the public purposes of the
designation have been utterly frustrated.

Any finding the director natural heritage preservation commission is required to make
under this section shall be made only after a public hearing and upon notice. The notice required
by this section shall set forth the substance of the proposed action and describe, with or without
legal description, the area affected and shall set forth the time and place of the hearing and shall be
published at least twice (2) a week for three (3) successive weeks before the hearing in a newspaper
published in the county where the property is located and in a newspaper with statewide
distribution. No finding, which the director natural heritage preservation commission is required to
make, shall be effective until the finding has been published. No action shall be taken by the state
pursuant to the finding prior to the expiration of sixty (60) days after the finding becomes effective.

During the sixty (60) day period, any finding may be appealed by any resident of this state in a suit
brought against the director natural heritage preservation commission in the superior court for the
judicial district of Providence. In any action, the court shall vacate the finding if it finds the director
natural heritage preservation commission acted arbitrarily or illegally in making the finding. During
the pendency of an appeal the state shall take no action pursuant to the findings of the director
natural heritage preservation commission.

SECTION 5. Chapter 42-122 of the General Laws entitled "Natural Areas Protection Act of 1993" is hereby amended by adding thereto the following sections:

42-122-8. Preservation of old growth forests and rare forest ecosystems.

(a) The general assembly recognizes that:

(1) Old growth forests are significant ecosystems where native trees and animals live.

(2) There are certain animals, insects, and birds that only live in old growth forests.

(3) There are also native tree species that might not come back if an old growth forest is cut.

(4) More species live in old growth forests than second growth forests.

(5) Old growth forests are important carbon sinks storing more carbon than an average Rhode Island forest, and if cut, would release its stored carbon into the atmosphere.

(6) Old growth forests are extremely rare, and once cut, might not come back for one hundred (100) years or more.

(7) Rhode Island's old growth forests are at serious risk of being cut for development to include, but not limited to, solar projects.

(8) It is a matter of public interest that old growth forests receive special consideration for management purposes.

(9) It is a matter of public interest that old growth forests are to be untouched and left in their perfect natural state.

(b) The natural heritage preservation commission shall be responsible for the protection of Rhode Island's old growth forests and rare forest ecosystems, as well as the many native species that live in these forests. In order to prevent the accidental destruction of old growth forests and rare forest ecosystems on public land, before any forestry operations take place on state land, or any land owned by the cities and towns in Rhode Island, the natural heritage preservation commission must be notified of the forestry operation no less than two (2) months in advance and given the opportunity to survey the site. All documents pertaining to the forestry operation must be turned over to the natural heritage preservation commission at the same time as the initial notice.

If the natural heritage preservation commission determines an old growth forest or rare forest ecosystem is found on the site planned for the forestry operation, the natural heritage preservation commission has the authority to designate the site as a natural area preserve which would prohibit the forestry operation from taking place.

(c) Before any state or municipally funded forestry operations take place on private land, the natural heritage preservation commission must be notified of the forestry operation no less than
two (2) months in advance and given the opportunity to survey the site. All documents pertaining
to the forestry operation must be turned over to the natural heritage preservation commission at the
same time as the initial notice. If the natural heritage preservation commission determines an old
growth forest or rare forest ecosystem is found on the site planned for the forestry operation, the
natural heritage preservation commission has the authority to stop the forestry operation from
taking place.

(d) Any forestry operations on state land or any land owned by the cities and towns in
Rhode Island before the natural heritage preservation commission is notified about the forestry
operation or during the two (2) month period that the natural heritage preservation commission has
a chance to survey the site where the forestry operation is scheduled to take place is strictly
prohibited.

(e) Any forestry operations funded by the state or the cities and towns in Rhode Island on
private land before the natural heritage preservation commission is notified about the forestry
operation, or during the two (2) month period that the natural heritage preservation commission has
a chance to survey the site where the forestry operation is scheduled to take place, or after the site
is determined by the natural heritage preservation commission to contain an old growth forest or
rare forest ecosystem is strictly prohibited.

(f) Whenever any land is acquired by the state or any of its cities and towns, a survey shall
be conducted by the natural heritage preservation commission to identify the presence of any old
growth forests or rare forest ecosystems. No forestry operation shall be conducted until completion
of the survey pursuant to the provision in this section.

(g) Any forestry operations in the natural area preserves are strictly prohibited.


(a) Any person, firm or corporation violating the provisions of § 42-122-8, shall be
punished by a fine of not less than five thousand dollars ($5,000) for each offense.

(b) The natural heritage preservation commission has the authority to order anyone
convicted of violating § 42-122-8, or any governmental entity which the natural heritage
preservation commission determines violated § 42-122-8 to donate no less than three thousand
dollars ($3,000) to the natural heritage preservation revolving fund pursuant to § 42-17.5-3.

SECTION 6. Title 2 of the General Laws entitled "AGRICULTURE AND FORESTRY"
is hereby amended by adding thereto the following chapter:

CHAPTER 28

NATURAL HERITAGE PRESERVATION COMMISSION

2-28-1. Natural heritage preservation commission.
No powers or duties granted in title 2, entitled "Agriculture and Forestry" herein shall be construed to abrogate the powers or duties granted to the natural heritage preservation commission under chapter 17.5 of title 42 and chapter 122 of title 42, as amended.

SECTION 7. This act shall take effect upon passage.
This act would amend the composition of the natural heritage preservation commission and would separate the commission from the control of the department of environmental management and would further provide that the commission be responsible for the preservation and management of the state's natural area preserves. This act would take effect upon passage.