

2008 -- H 7787

=====
LC02051
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2008

A N A C T

RELATING TO WATERS AND NAVIGATION - CLEAN WATER

Introduced By: Representatives Ferri, Dennigan, Slater, Segal, and Walsh

Date Introduced: February 26, 2008

Referred To: House Environment and Natural Resources

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 46 of the General Laws entitled "WATERS AND NAVIGATION" is
2 hereby amended by adding thereto the following chapter:

3 CHAPTER 32

4 RHODE ISLAND SHARED WATER RESOURCES ACT

5 **46-32-1. Short title. --** This act shall be known and may be cited as the "Rhode Island
6 Shared Water Resources Act."

7 **46-32-2. Legislative findings and purpose. --** (a) The general assembly finds and
8 declares that:

9 (1) A clean, safe and reliable water supply is essential to the health of the public and to
10 the economic vitality of the state.

11 (2) The waters of the state of Rhode Island are a natural resource owned by the state in
12 trust for the public and subject to the state's sovereign power to plan, regulate, and control the
13 withdrawal and use of those waters, under law, in order to protect public health, safety, and
14 welfare. This act is in furtherance of the state's role in defining reasonable use of the state's
15 waters.

16 (3) Healthy and clean rivers and streams are essential to the identity and the economy of
17 the state, as they provide not only water for drinking and other public health uses, but also
18 support fisheries, recreation and tourism, and provide essential fresh water flow to Narragansett
19 Bay.

1 (4) Rhode Island is fortunate to have sufficient rain fall to meet Rhode Island's water
2 needs, if that water is not wasted and if it is well and fairly managed.

3 (5) The purpose of these provisions is to support environmental and public health by
4 defining a sustainable amount of water available for use, to provide more reliable water supply by
5 protecting our investment in water supply infrastructure and reducing seasonal peaks in water use,
6 and to minimize waste so that more water is available for important economic purposes, all so
7 that we can meet our state's water needs reliably into the future.

8 SECTION 2. Section 39-1-2 of the General Laws in Chapter 39-1 entitled "Public
9 Utilities Commission" is hereby amended to read as follows:

10 **39-1-2. Definitions.** -- Terms used in this title shall be construed as follows, unless
11 another meaning is expressed or is clearly apparent from the language or context:

12 (1) "Administrator" means the administrator of the division of public utilities and
13 carriers;

14 (2) "Airport" and "landing field" mean and include all airports and landing fields other
15 than those owned by the state;

16 (3) "Chairperson" means the chairperson of the public utilities commission;

17 (4) "Charter carrier" means and includes all carriers for hire or compensation within this
18 state not included in the definition of common carrier;

19 (5) "Commission" means the public utilities commission;

20 (6) "Commissioner" means a member of the public utilities commission;

21 (7) "Common carrier", except when used in chapters 12, 13, and 14 of this title, means
22 and includes all carriers for hire or compensation including railroads, street railways, express,
23 freight and freight line companies, dining car companies, steam boat, motor boat, power boat,
24 hydrofoil, and ferry companies and all other companies operating any agency or facility for
25 public use in this conveyance over fixed routes, or between fixed termini within this state or
26 persons or property by or by a combination of land, air, or water;

27 (8) "Company" means and includes a person, firm, partnership, corporation, quasi-
28 municipal corporation, association, joint stock association or company, and his, her, its, or their
29 lessees, trustees, or receivers appointed by any court;

30 (9) "Customer" means a company taking service from an electric distribution company at
31 a single point of delivery or meter location;

32 (10) "Distribution facility" means plant or equipment used for the distribution of
33 electricity and which is not a transmission facility;

34 (11) "Division" means the division of public utilities and carriers;

1 (12) "Electric distribution company" means a company engaging in the distribution of
2 electricity or owning, operating, or controlling distribution facilities and shall be a public utility
3 pursuant to section 39-1-2(20);

4 (13) "Electric transmission company" means a company engaging in the transmission of
5 electricity or owning, operating, or controlling transmission facilities. An electric transmission
6 company shall not be subject to regulation as a public utility except as specifically provided in the
7 general laws, but shall be regulated by the federal energy regulatory commission and shall
8 provide transmission service to all nonregulated power producers and customers, whether
9 affiliated or not, on comparable, nondiscriminatory prices and terms. Electric transmission
10 companies shall have the power of eminent domain exercisable following a petition to the
11 commission pursuant to section 39-1-31;

12 (14) "Liquefied natural gas" means a fluid in the liquid state composed predominantly of
13 methane and which may contain minor quantities of ethane, propane, nitrogen, or other
14 components normally found in natural gas;

15 (15) "Manufacturing customers" means all customers that have on file with an electric
16 distribution company a valid certificate of exemption from the Rhode Island sales tax indicating
17 the customer's status as a manufacturer pursuant to section 44-18-30;

18 (16) "Motor carriers" means any carrier regulated by the administrator pursuant to
19 Chapters 3, 11, 12, 13 and 14 of this title;

20 (17) "Natural gas" means the combustible gaseous mixture of low-molecular-weight,
21 paraffin hydrocarbons, generated below the surface of the earth containing mostly methane and
22 ethane with small amounts of propane, butane, and hydrocarbons, and sometimes nitrogen,
23 carbon dioxide, hydrogen sulfide, and helium;

24 (18) "Nonprofit housing development corporation" means a nonprofit corporation, which
25 has been approved as a section 501(c)(3), 26 U.S.C. section 501(c)(3), corporation by the internal
26 revenue service, and which is organized and operated primarily for the purpose of providing
27 housing for low and moderate income persons;

28 (19) "Nonregulated power producer" means a company engaging in the business of
29 producing, manufacturing, generating, buying, aggregating, marketing or brokering electricity for
30 sale at wholesale or for retail sale to the public; provided however, that companies which
31 negotiate the purchase of electric generation services on behalf of customers and do not engage in
32 the purchase and resale of electric generation services shall be excluded from this definition. A
33 nonregulated power producer shall not be subject to regulation as a public utility except as
34 specifically provided in the general laws;

1 (20) "Public utility" means and includes every company that is an electric distribution
2 company and every company operating or doing business in intrastate commerce and in this state
3 as a railroad, street railway, common carrier, gas, liquefied natural gas, water supplier as defined
4 in this section, telephone, telegraph, and pipeline company, and every company owning, leasing,
5 maintaining, managing, or controlling any plant or equipment or any part of any plant or
6 equipment within this state for manufacturing, producing, transmitting, distributing, delivering, or
7 furnishing natural or manufactured gas, directly or indirectly to or for the public, or any cars or
8 equipment employed on or in connection with any railroad or street railway for public or general
9 use within this state, or any pipes, mains, poles, wires, conduits, fixtures, through, over, across,
10 under, or along any public highways, parkways or streets, public lands, waters, or parks for the
11 transmission, transportation, or distribution of gas for sale to the public for light, heat, cooling, or
12 power for providing audio or visual telephonic or telegraphic communication service within this
13 state ~~or any pond, lake, reservoir, stream, well, or distributing plant or system employed for the~~
14 ~~distribution of water to the consuming public within this state including the water supply board of~~
15 ~~the city of Providence; provided, that, except as provided in section 39-16-9 and in chapter 2072~~
16 ~~of the public laws, 1933, as amended, this definition shall not be construed to apply to any public~~
17 ~~waterworks or water service owned and furnished by any city, town, water district, fire district, or~~
18 ~~any other municipal or quasi-municipal corporation, excepting the water supply board of the city~~
19 ~~of Providence, unless any city, town, water district, fire district, municipal, or quasi-municipal~~
20 ~~corporation obtains water from a source owned or leased by the water resources board, either~~
21 ~~directly or indirectly, or obtains a loan from the board pursuant to the provisions of chapter 15 of~~
22 ~~title 46, or sells water, on a wholesale or retail basis, inside and outside the territorial limits of the~~
23 ~~city or town, water district, fire district, municipal or quasi-municipal corporation, except,~~
24 ~~however, that a public waterworks or water service owned and furnished by any city, town, water~~
25 ~~district, fire district, or any other municipal or quasi-municipal corporation which sells water, on~~
26 ~~a wholesale or retail basis, inside and outside its territorial limits shall not be construed as a~~
27 ~~public utility if it has fewer than one thousand five hundred (1500) total customer service~~
28 ~~connections and provided outside sales do not exceed ten percent (10%) of the total water service~~
29 ~~connections or volumetric sales and provided the price charged to outside customers, per unit of~~
30 ~~water, is not greater than the price charged to inside customers for the same unit of water, nor to~~
31 the Rhode Island public transit authority, or to the production and/or distribution of steam, heat,
32 or water by Rhode Island port authority and economic development corporation in the town of
33 North Kingstown; and the term "public utility" shall also mean and include the Narragansett Bay
34 water quality management district commission; and provided that the ownership or operation of a

1 facility by a company which dispenses alternative fuel or energy sources at retail for use as a
2 motor vehicle fuel or energy source, and the dispensing of alternative fuel or energy sources at
3 retail from such a facility, does not make the company a public utility within the meaning of this
4 title solely because of that ownership, operation, or sale; and provided further that this exemption
5 shall not apply to presently regulated public utilities which sell natural gas or are dispensers of
6 other energy sources; and provided further, that the term "public utility" shall not include any
7 company;

8 (i) Producing or distributing steam or heat from a fossil fuel fired cogeneration plant
9 located at the university of Rhode Island South Kingstown, Rhode Island and

10 (ii) Producing and/or distributing thermal energy and/or electricity to a state owned
11 facility from a plant located on an adjacent site regardless of whether steam lines cross a public
12 highway.

13 (21) "Purchasing cooperatives" shall mean any association of electricity consumers
14 which join for the purpose of negotiating the purchase of power from a nonregulated power
15 producer, provided however, that purchasing cooperatives shall not be required to be legal entities
16 and are prohibited from being engaged in the re-sale of electric power;

17 (22) "Railroad" means and includes every railroad other than a street railway, by
18 whatsoever power operated for public use in the conveyance in this state of persons or property
19 for compensation, with all bridges, ferries, tunnels, switches, spurs, tracks, stations, wharves, and
20 terminal facilities of every kind, used, operated, controlled, leased, or owned by or in connection
21 with any railroad;

22 (23) "Retail access" means the use of transmission and distribution facilities owned by
23 an electric transmission company or an electric distribution company to transport electricity sold
24 by a nonregulated power producer to retail customers pursuant to section39-1-27.3;

25 (24) "Street railway" means and includes every railway by whatsoever power operated or
26 any extension or extensions, branch, or branches thereof, for public use in the conveyance in this
27 state of persons or property for compensation, being mainly upon, along, above, or below any
28 street, avenue, road, highway, bridge, or public place in any city or town, and including all
29 switches, spurs, tracks, rights of trackage, subways, tunnels, stations, terminals and terminal
30 facilities of every kind, used, operated, controlled, or owned by or in connection with any street
31 railway;

32 (25) "Transmission facility" means plant or equipment used for the transmission of
33 electricity as determined by the federal energy regulatory commission pursuant to federal law as
34 of the date of the property transfers pursuant to section39-1-27(c);

1 (26) Notwithstanding any provision of this section or any provision of the act entitled,
2 "An Act Relating to the Utility Restructuring Act of 1996" (hereinafter "Utility Restructuring
3 Act"), upon request by the affected electric utility, the commission may exempt from the Utility
4 Restructuring Act or any provision(s) thereof, an electric utility which meets the following
5 requirements: (i) the utility is not selling or distributing electricity outside of the service territory
6 in effect for that utility on the date of passage of the Utility Restructuring Act; and (ii) the number
7 of kilowatt hours sold or distributed annually by the utility to the public is less than five percent
8 (5%) of the total kilowatt hours consumed annually by the state. Provided however that nothing
9 contained in this section shall prevent the commission from allowing competition in the
10 generation of electricity in service territories of utilities exempted in whole or in part from the
11 Utility Restructuring Act pursuant to this section, as long as such allowance of competition is
12 conditioned upon payment to the exempted electric utility of a nonbypassable transition charge
13 calculated to recover the elements comparable in nature to the elements in section 39-1-27.4(b)
14 and (c) taking into consideration any unique circumstances applicable to the exempted electric
15 utility.

16 (27) "Water supplier" means and includes any company, district authority, municipal
17 department, agency authority or board, or any department, agency or corporation of the state that
18 has water supply as a statutory purpose, that supplies, treats, transmits, and/or distributes water
19 and is a water supply system as defined in section 46-15-1.1 and shall include any pond, lake,
20 reservoir, stream, well or distributing plant or system employed for the distribution of water to the
21 consuming public within this state including the water supply board of the city of Providence;
22 however, except as provided in section 39-16-9 and in chapter 2072 of the public laws, 1933, as
23 amended, this definition shall not be construed to apply to any public waterworks or water service
24 exempted by law from this title or to any public waterworks or water service owned and furnished
25 by any city, town, water district, fire district or any other municipal or quasi-municipal
26 corporation which shall not be construed as a public utility if it has fewer than one thousand five
27 hundred (1,500) total customer service connections and provided outside sales do not exceed ten
28 percent (10%) of the total water service connections or volumetric sales and provided the
29 commodity price charged to outside customers, per unit of water, is not greater than the price
30 charged to inside customers for the same unit of water.

31 SECTION 3. Section 39-3-11.1 of the General Laws in Chapter 39-3 entitled "Regulatory
32 Powers of Administration" is hereby amended to read as follows:

33 **39-3-11.1. Changes in rates of publicly owned water authorities. --** (a)
34 Notwithstanding any other provisions of this chapter, the commission shall not have the power to

1 suspend the taking effect of any change or changes in the rates, tolls, and charges filed and
2 published in compliance with the requirements of sections 39-3-10 and 39-3-11 by any public
3 waterworks or water service owned or furnished by a city, town, or any other municipal
4 corporation defined as a public utility in section 39-1-2, when the change or changes are proposed
5 to be made solely for the purpose of making payments or compensation to any city or town for
6 reimbursement of any loans or advances of money previously issued to any public waterworks or
7 water service by any city or town under existing contracts or arrangements; provided, however,
8 that the change or changes shall take effect subject to refund or credit pending further
9 investigation, hearing, and order by the commission within eight (8) months after the effective
10 date. The public waterworks or water service shall file with the commission the new rate schedule
11 along with the documentary evidence of the indebtedness supporting the new rates. Further, the
12 rate schedule shall be published in a newspaper of general circulation in the service area by the
13 waterworks or water service at least ten (10) days prior to the effective date thereof.

14 (b) The provisions of this section shall not be construed to bar recovery of loans or
15 advances of money not otherwise reflected in existing rates, tolls, and charges issued to May 19,
16 1982.

17 (c) The rates of water suppliers subject to commission rate regulation shall be adequate to
18 pay for all costs associated with water supply, including, but not limited to:

19 (1) Acquisition, treatment, transmission, distribution and availability of water;

20 (2) System administration and overhead, including the cost and/or value of all services
21 and facilities provided by the city or town to the water supplier, including, but not limited to,
22 testing, operation, maintenance, replacement, repair, debt service, and reasonable compensation
23 to the city or town for the fair value of all facilities provided by the city or town, including, but
24 not limited to, supply, production, treatment, transmission, and administration facilities;

25 (3) Programs for the conservation and efficient use of water, including costs of
26 developing, implementing, enforcing and evaluating such conservation programs and including
27 conservation pricing as described in subsection (e);

28 (4) Annual operating reserves of at least two and one-half percent (2.5%) of annual gross
29 revenues by the conclusion of fiscal year 2009 and at least five percent (5%) of annual gross
30 revenues by the conclusion of fiscal year 2010;

31 (5) Capital reserves to provide for system maintenance, repair and replacement, of at least
32 ten percent (10%) of annual gross revenues by the conclusion of fiscal year 2009 and at least
33 twenty percent (20%) of annual gross revenues by the conclusion of fiscal year 2010;

34 (6) Revenue stabilization to cover costs as effective conservation programs reduce waste,

1 as described in subsection (d); and

2 (7) Such debt service reserves as are reasonable.

3 (d) Each water supplier that is subject to the jurisdiction of the commission shall establish
4 a revenue stabilization account for the purpose of maintaining revenues sufficient to compensate
5 that supplier for reasonable expenses if revenues decline as a result of implementing water
6 conservation programs, and shall accumulate funds in the revenue stabilization account of
7 between ten percent (10%) and fifteen percent (15%) of the average annual operating expenses of
8 the supplier. Monies in such revenue stabilization accounts and any interest thereon, shall remain
9 in the revenue stabilization accounts and shall be used to supplement other revenues so that the
10 supplier's reasonable costs are compensated. A supplier may draw upon its revenue stabilization
11 account without further action of the commission if revenues in any fiscal year fall below the
12 level sufficient to provide reasonable compensation for services rendered, subject to periodic
13 review by the commission to ensure that the purpose of section 39-3-11.1 are fulfilled.

14 (e) Water suppliers subject to the jurisdiction of the commission are encouraged to take
15 aggressive action to reduce waste of water and to reduce seasonal increases in the use of water,
16 and may adopt conservation pricing or otherwise revise their rates as a means to achieve those
17 goals. The purpose of conservation pricing is to protect the long-term interests of water
18 consumers by reducing the need for expensive new supply, reducing waste so that water use is
19 sustainable over the long-term, and by making water available for important public purposes,
20 with the long-term goal of controlling costs while assuring that water needs are met. For the
21 purpose of encouraging conservation of water, suppliers are authorized to request increased rates
22 based on quantity used either throughout the year or seasonally and to seek expedited review by
23 the commission of such revised rates. Revenues generated from the adoption of conservation
24 pricing that are in excess of reasonable costs shall be used for rate relief for residential customers
25 designed to make a basic level of water use affordable or to fund the revenue stabilization account
26 described in subsection (d) or to fund the other accounts and reserves described in this section.
27 Rate increase proposals under this section shall be evaluated based on whether they are
28 reasonably likely to reduce demand and not based on any other standard.

29 SECTION 4. Section 42-17.1-2 of the General Laws in Chapter 42-17.1 entitled
30 "Department of Environmental Management" is hereby amended to read as follows:

31 **42-17.1-2. Powers and duties.** -- The director of environmental management shall have
32 the following powers and duties:

33 (1) To supervise and control the protection, development, planning, and utilization of the
34 natural resources of the state, such resources, including but not limited to, water, plants, trees,

1 soil, clay, sand, gravel, rocks and other minerals, air, mammals, birds, reptiles, amphibians, fish,
2 shellfish, and other forms of aquatic, insect, and animal life;

3 (2) To exercise all functions, powers, and duties heretofore vested in the department of
4 agriculture and conservation, and in each of the divisions of the department, such as the
5 promotion of agriculture and animal husbandry in their several branches, including the inspection
6 and suppression of contagious diseases among animals, the regulation of the marketing of farm
7 products, the inspection of orchards and nurseries, the protection of trees and shrubs from
8 injurious insects and diseases, protection from forest fires, the inspection of apiaries and the
9 suppression of contagious diseases among bees, prevention of the sale of adulterated or
10 misbranded agricultural seeds, promotion and encouragement of the work of farm bureaus in
11 cooperation with the University of Rhode Island, farmers' institutes and the various organizations
12 established for the purpose of developing an interest in agriculture, together with such other
13 agencies and activities as the governor and the general assembly may from time to time place
14 under the control of the department, and as heretofore vested by such of the following chapters
15 and sections of the general laws as are presently applicable to the department of environmental
16 management and which were previously applicable to the department of natural resources and the
17 department of agriculture and conservation or to any of its divisions: chapters 1 through 22,
18 inclusive, as amended, in title 2 entitled "Agriculture and Forestry;" chapters 1 through 17,
19 inclusive, as amended, in title 4 entitled "Animals and Animal Husbandry;" chapters 1 through
20 19, inclusive, as amended, in title 20 entitled "Fish and Wildlife;" chapters 1 through 32,
21 inclusive, as amended, in title 21 entitled "Food and Drugs;" chapter 7 of title 23 as amended,
22 entitled "Mosquito Abatement;" and by any other general or public law relating to the department
23 of agriculture and conservation or to any of its divisions or bureaus;

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

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

34 (5) To exercise all the functions, powers and duties heretofore vested in the department

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

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

11 (7) To cooperate with, advise, and guide conservation commissions of cities and towns
12 created under chapter 35 of title 45 entitled "Conservation Commissions", as enacted by chapter
13 203 of the Public Laws, 1960;

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

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

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

26 (11) To provide for the maintenance of waterways and boating facilities, consistent with
27 chapter 6.1 of title 46, by: (i) establishing minimum standards for upland beneficial use and
28 disposal of dredged material; (ii) promulgating and enforcing rules for water quality, ground
29 water protection, and fish and wildlife protection pursuant to section 42-17.1-24; (iii) planning for
30 the upland beneficial use and/or disposal of dredged material in areas not under the jurisdiction of
31 the council pursuant to section 46-23-6(2); and (iv) cooperating with the coastal resources
32 management council in the development and implementation of comprehensive programs for
33 dredging as provided for in sections 46-23-6(1)(ii)(H) and 46-23-18.3; and (v) monitoring dredge
34 material management and disposal sites in accordance with the protocols established pursuant to

1 section 46-6.1-5(3) and the comprehensive program provided for in section 46-23-6(1)(ii)(H); no
2 powers or duties granted herein shall be construed to abrogate the powers or duties granted to the
3 coastal resources management council under chapter 23 of title 46, as amended;

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

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

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

34 (15) To establish and enforce minimum standards for permissible types of septage,

1 industrial waste disposal sites and waste oil disposal sites;

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

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

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

13 (19) To issue and enforce such rules, regulations, and orders as may be necessary to
14 carry out the duties assigned to the director and the department by any provision of law; and to
15 conduct such investigations and hearings and to issue, suspend, and revoke such licenses as may
16 be necessary to enforce those rules, regulations, and orders.

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

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

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

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

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

32 (I) For closely regulated industries;

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

34 (III) In emergency situations;

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

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

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

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

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

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

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

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

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

33 (D) Penalties. - Any willful and unjustified refusal of right of entry and inspection to
34 department personnel pursuant to an administrative warrant shall constitute a contempt of court

1 and shall subject the refusing party to sanctions, which in the court's discretion may result in up to
2 six (6) months imprisonment and/or a monetary fine of up to ten thousand dollars (\$10,000) per
3 refusal.

4 (21) To give notice of an alleged violation of law to the person responsible therefor
5 whenever the director determines that there are reasonable grounds to believe that there is a
6 violation of any provision of law within his or her jurisdiction or of any rule or regulation adopted
7 pursuant to authority granted to him or her, unless other notice and hearing procedure is
8 specifically provided by that law. Nothing in this chapter shall limit the authority of the attorney
9 general to prosecute offenders as required by law.

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

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

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

30 (iii) If a person upon whom a notice of violation has been served under the provisions of
31 this section or if a person aggrieved by any such notice of violation requests a hearing before the
32 director within ten (10) days of the service of notice of violation, the director shall set a time and
33 place for the hearing, and shall give the person requesting that hearing at least five (5) days
34 written notice thereof. After the hearing, the director may make findings of fact and shall sustain,

1 modify, or withdraw the notice of violation. If the director sustains or modifies the notice, that
2 decision shall be deemed a compliance order and shall be served upon the person responsible in
3 any manner provided for the service of the notice in this section.

4 (iv) The compliance order shall state a time within which the violation shall be remedied,
5 and the original time specified in the notice of violation shall be extended to the time set in the
6 order.

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

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

22 (22) To impose administrative penalties in accordance with the provisions of chapter
23 17.6 of this title and to direct that such penalties be paid into the account established by
24 subdivision (26); and

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

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

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

33 (iii) Service: - (A) Service upon a corporation under this section shall be deemed to
34 include service upon both the corporation and upon the person having active and general

1 supervision of the properties of such corporation.

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

6 (24) (i) To conduct surveys of the present private and public camping and other
7 recreational areas available and to determine the need for and location of such other camping and
8 recreational areas as may be deemed necessary and in the public interest of the state of Rhode
9 Island and to report back its findings on an annual basis to the general assembly on or before
10 March 1 of every year;

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

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

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

32 (26) To establish fee schedules by regulation with the approval of the governor for the
33 processing of applications and the performing of related activities in connection with the
34 department's responsibilities pursuant to subdivision (12) of this section, chapter 19.1 of title 23

1 as it relates to inspections performed by the department to determine compliance with chapter
2 19.1 and rules and regulations promulgated in accordance therewith, chapter 18.9 of title 23 as it
3 relates to inspections performed by the department to determine compliance with chapter 18.9
4 and the rules and regulations promulgated in accordance therewith, chapters 19.5 and 23 of title
5 23; chapter 12 of title 46 insofar as it relates to water quality certifications and related reviews
6 performed pursuant to provisions of the federal Clean Water Act, the regulation and
7 administration of underground storage tanks and all other programs administered under chapter
8 12 of title 46 and section 2-1-18 et seq., and chapter 13.1 of title 46 and chapter 13.2 of title 46
9 insofar as they relate to any reviews and related activities performed under the provisions of the
10 Groundwater Protection Act, chapter 23-24.9 as it relates to the regulation and administration of
11 mercury-added products, and chapter 17.7 of this title insofar as it relates to administrative
12 appeals of all enforcement, permitting and licensing matters to the administrative adjudication
13 division for environmental matters. Two (2) fee ranges shall be required: for "Appeal of
14 enforcement actions", a range of fifty dollars (\$50) to one hundred dollars (\$100), and for
15 "Appeal of application decisions", a range of five hundred dollars (\$500) to ten thousand dollars
16 (\$10,000). The monies from the administrative adjudication fees will be deposited as general
17 revenues and the amounts appropriated shall be used for the costs associated with operating the
18 administrative adjudication division.

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

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

33 (28) To establish and maintain an inventory of all interests in land held by public and
34 private land trust and to exercise all powers vested herein to insure the preservation of all

1 identified lands.

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

8 (ii) The term "public land trust" means any public instrumentality created by a Rhode
9 Island municipality for the purposes stated herein and financed by means of public funds
10 collected and appropriated by the municipality. The term "private land trust" means any group of
11 five (5) or more private citizens of Rhode Island who shall incorporate under the laws of Rhode
12 Island as a nonbusiness corporation for the purposes stated herein, or a national organization such
13 as the nature conservancy. The main purpose of either a public or a private land trust shall be the
14 protection, acquisition, or control of land, water, wildlife, wildlife habitat, plants, and/or other
15 natural features, areas, or open space for the purpose of managing or maintaining, or causing to
16 be managed or maintained by others, the land, water, and other natural amenities in any
17 undeveloped and relatively natural state in perpetuity. A private land trust must be granted
18 exemption from federal income tax under Internal Revenue Code 501c(3) [26 U.S.C. section
19 501(c)(3)] within two (2) years of its incorporation in Rhode Island or it may not continue to
20 function as a land trust in Rhode Island. A private land trust may not be incorporated for the
21 exclusive purpose of acquiring or accepting property or rights in property from a single
22 individual, family, corporation, business, partnership, or other entity. Membership in any private
23 land trust must be open to any individual subscribing to the purposes of the land trust and
24 agreeing to abide by its rules and regulations including payment of reasonable dues.

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

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

1 private and public land trust land holdings in Rhode Island.

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

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

24 (31) To enforce, by such means as provided by law, the standards for the quality of air,
25 and water, and the location, design, construction and operation of all underground storage
26 facilities used for storing petroleum products or hazardous materials; any order or notice issued
27 by the director relating to the location, design construction, operation or maintenance of an
28 underground storage facility used for storing petroleum products or hazardous materials shall be
29 eligible for recordation under chapter 13 of title 34. The director shall forward the order or notice
30 to the city or town wherein the subject facility is located, and the order or notice shall be recorded
31 in the general index by the appropriate municipal officer in the land evidence records in the city
32 or town wherein the subject facility is located. Any subsequent transferee of that facility shall be
33 responsible for complying with the requirements of the order or notice. Upon satisfactory
34 completion of the requirements of the order or notice, the director shall provide written notice of

1 the same, which notice shall be eligible for recordation. The original written notice shall be
2 forwarded to the city or town wherein the subject facility is located, and the notice of satisfactory
3 completion shall be recorded in the general index by the appropriate municipal official in the land
4 evidence records in the city or town wherein the subject facility is located. A copy of the written
5 notice shall be forwarded to the owner of the subject facility within five (5) days of a request for
6 it, and, in any event, shall be forwarded to the owner of the subject facility within thirty (30) days
7 after correction.

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

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

19 (34) To establish and enforce standards to protect and restore flows and water levels in all
20 rivers, streams and other natural water bodies, that are protective of natural aquatic life, including
21 diadromous fish, and that provide sufficient water for other reasonable and necessary uses of
22 water as provided in section 46-15.7-1. These standards shall:

23 (i) include specific numeric criteria;

24 (ii) be based on the measured or calculated natural variations of flows and water levels;
25 and

26 (iii) be used to determine the maximum amount of water that can be safely withdrawn,
27 diverted or used from any ground or surface water while still being protective of natural aquatic
28 life. The director shall promulgate such standards not later than one year after the enactment of
29 this law and shall provide for the periodic review and improvement of these statewide standards.
30 After the statewide standards are established, the director may allow, as appropriate, for the
31 establishment of watershed-specified standards, provided that such watershed specific standards
32 are protective of natural aquatic life, including diadromous fish. All other laws, rules and
33 regulations shall be construed to be consistent and/or complementary with this section.

34 SECTION 5. Sections 45-22.2-6 and 45-22.2-12 of the General Laws in Chapter 45-22.2

1 entitled "Rhode Island Comprehensive Planning and Land Use Act" are hereby amended to read
2 as follows:

3 **45-22.2-6. Required elements of comprehensive plan.** -- The comprehensive plan is a
4 statement (in text, maps, illustrations, or other media of communication) that is designed to
5 provide a basis for rational decision making regarding the long term physical development of the
6 municipality. The definition of goals and policies relative to the distribution of future land uses,
7 both public and private, forms the basis for land use decisions to guide the overall physical,
8 economic, and social development of the municipality. The comprehensive plan must be
9 internally consistent in its policies, forecasts, and standards, and include the following elements:

10 (1) Goals and policies statement. - Identifies the goals and policies of the municipality
11 for its future growth and development. The statement enumerates how the plan is consistent with
12 the overall goals and policies of this chapter, the state guide plan, and related elements.

13 (2) Land use plan element. - Designates the proposed general distribution and general
14 location and interrelationship of land use for residential, commercial, industry, open space,
15 recreation facilities, and other categories of public and private uses of land. The land use element
16 is based upon the other elements contained in this section, and it relates the proposed standards of
17 population density and building intensity to the capacity of the land and available or planned
18 facilities and services. A land use plan map, illustrating the future strategy and land use policy of
19 the municipality, as defined by the comprehensive plan, is required. The land use plan must
20 contain an analysis of the inconsistency of existing zoning districts, if any, with the land use plan.
21 The land use plan should specify the process by which the zoning ordinance and zoning map shall
22 be amended to conform to the comprehensive plan.

23 (3) Housing element. - Consists of identification and analysis of existing and forecasted
24 housing needs and objectives including programs for the preservation, including, but not limited
25 to, the preservation of federally insured or assisted housing, improvement, and development of
26 housing for all citizens. The housing element enumerates local policies and implementation
27 techniques to promote the production and rehabilitation of housing that achieves a balance of
28 housing choices, recognizing local, regional, and statewide needs for all income levels and for all
29 age groups, including, but not limited to, the affordability of housing and the preservation of
30 federally insured or assisted housing. The element identifies specific programs and policies for
31 inclusion in the implementation program necessary to accomplish this purpose and takes into
32 account growth management and the need to phase and pace development in areas of rapid
33 growth. The housing element includes an affordable housing plan that identifies housing needs in
34 the community, including, but not limited to, the needs for low and moderate income housing,

1 establishes goals and policies to address those needs, consistent with available resources and the
2 need to protect public health, including drinking water supplies and safety and environmental
3 quality. The affordable housing plan includes an implementation program of actions to be taken
4 to effectuate the policies and goals of the affordable housing plan.

5 (4) Economic development element. - Includes the identification of economic
6 development policies and strategies, either existing or proposed by the municipality, in
7 coordination with the land use plan element. These policies should reflect local, regional, and
8 statewide concerns for the expansion and stabilization of the economic base and the promotion of
9 quality employment opportunities and job growth. The policies and implementation techniques
10 must be identified for inclusion in the implementation program element.

11 (5) Natural and cultural resources element. - Provides an inventory of the significant
12 natural resource areas as water, soils, prime agricultural lands, natural vegetation systems,
13 wildlife, watersheds, wetlands, aquifers, coastal features, flood plains, and other natural
14 resources, and the policies for the protection and management of these areas. The element
15 includes policies for the protection of the historic and cultural resources of the municipality and
16 the state. The policies and implementation techniques must be identified for inclusion in the
17 implementation program element.

18 (6) Services and facilities element. - Provides an inventory of existing and forecasted
19 needs for facilities and services used by the public as, but not limited to, educational facilities,
20 public safety, water, sanitary sewers, libraries, and community facilities. The policies and
21 implementation techniques must be identified for inclusion in the implementation program
22 element.

23 (7) Open space and recreation element. - Includes an inventory of recreational resources,
24 open space areas, and recorded access to these resources and areas. The element must also
25 contain an analysis of forecasted needs and policies for the management and protection of these
26 resources and areas. The policies and implementation techniques must be identified for inclusion
27 in the implementation program element.

28 (8) Circulation element. - Consists of the inventory and analysis of existing and proposed
29 major circulation systems, street patterns, and any other modes of transportation in coordination
30 with the land use element. The policies and implementation techniques must be identified for
31 inclusion in the implementation program element.

32 (9) Implementation program.

33 (i) A statement which defines and schedules for a period of five (5) years or more the
34 specific public actions to be undertaken in order to achieve the goals and objectives of each

1 element of the comprehensive plan. Scheduled expansion or replacement of public facilities, and
2 the anticipated costs and revenue sources proposed to meet those costs reflected in a
3 municipality's capital improvement program, must be included in the implementation program.

4 (ii) The implementation program identifies the public actions necessary to implement the
5 objectives and standards of each element of the comprehensive plan that require the adoption or
6 amendment of codes and ordinances by the governing body of the municipality.

7 (iii) The implementation program identifies other public authorities or agencies owning
8 water supply facilities or providing water supply services to the municipality, and coordinates the
9 goals and objectives of the comprehensive plan with the actions of public authorities or agencies
10 with regard to the protection of watersheds as provided in section 46-15.3-1, et seq., including the
11 implementation of water conservation measures for water resources located within the
12 municipality as defined in the demand management section of relevant water system supply
13 management plans pursuant to subdivision 46-15.3-5.1(a)(1), including, but not limited to, water
14 conservation planning and implementation, water conservation performance measures, and water
15 use efficiency requirements.

16 (iv) The implementation program must detail the timing and schedule of municipal
17 actions required to amend the zoning ordinance and map to conform to the comprehensive plan.

18 **45-22.2-12. Updates and amendments.** -- (a) Each municipality shall submit any
19 amended comprehensive plans, revised pursuant to the chapter, including proposed amendments
20 to the implementation program component of a plan, to the director for review and approval in
21 the same manner as provided for review of new comprehensive plans. The director may provide
22 an expedited review procedure for those submissions which represent amendments to
23 comprehensive plans approved by it after January 1, 1990.

24 (b) A municipality may periodically review and amend its plan in a timely manner to
25 account for growth. At a minimum, a municipality shall update its comprehensive plan at least
26 once every five (5) years. Any updates after July 1, 2008 must include water conservation
27 measures for water resources located within the municipality as defined in the demand
28 management section of relevant water system supply management plans pursuant to subdivision
29 46-15.3-5.1(a)(1), including, but not limited to, water conservation planning and implementation,
30 water conservation performance measures, and water use efficiency requirements.

31 (c) A municipality may not amend its comprehensive plan more than four (4) times in
32 any one calendar year with the exception of any amendments directly related to water
33 conservation.

34 SECTION 6. Section 46-12.8-4 of the General Laws in Chapter 46-12.8 entitled "Water

1 Projects Revolving Loan Fund" is hereby amended to read as follows:

2 **46-12.8-4. Establishment of safe drinking water revolving loan fund, sources of**
3 **funds, permitted uses.** -- (a) The agency shall be the instrumentality of the state for
4 administration of the safe drinking water revolving loan fund, and such other funds it holds or for
5 which it is responsible, and, in conjunction with the department, is empowered to and shall take
6 all action necessary or appropriate to secure to the state the benefits of any other federal or state
7 legislation pertaining to the funds and to the financing of approved projects. Without limiting the
8 generality of the foregoing and other powers of the agency provided in this chapter, the agency is
9 empowered to and shall:

10 (1) Cooperate with any appropriate federal agencies in all matters related to
11 administration of the safe drinking water revolving loan fund and, pursuant to the provisions of
12 this chapter, administer the fund and receive and disburse such funds from any such agencies and
13 from the state as may be available for the purpose of the safe drinking water revolving loan fund.

14 (2) In cooperation with the department, prepare and submit to any appropriate federal
15 agencies, the department and the governor, annual and other reports and audits required by law.

16 (3) Subject to the provisions of this chapter, make, and enter into binding commitments
17 to provide financial assistance to local governmental units and private water companies from
18 amounts on deposit in the safe drinking water revolving loan fund and from other funds of the
19 agency.

20 (4) Establish and maintain fiscal controls and accounting procedures conforming to
21 generally accepted government accounting standards sufficient to ensure proper accounting for
22 receipts and disbursements from the safe drinking water revolving loan fund and other funds it
23 holds or for which it is responsible and, with the approval of the department, adopt such rules,
24 regulations, procedures, and guidelines which it deems necessary to assure that local
25 governmental units and private water companies administer and maintain approved project
26 accounts and other funds and accounts relating to financial assistance in accordance with
27 generally accepted government accounting standards.

28 (b) The agency shall establish and set up on its books a special fund, designated the safe
29 drinking water revolving loan fund, to be held in trust and to be administered by the agency solely
30 as provided in this chapter and in any trust agreement securing bonds of the agency issued under
31 the chapter. The agency shall credit to the safe drinking water revolving loan fund or one or more
32 accounts therein:

33 (1) All amounts appropriated or designated to the agency by the state or federal
34 government for purposes of the fund;

1 (2) All loan repayments and other payments received by the agency on any loans, local
2 governmental obligations and the obligations of private water companies;

3 (3) All investment earnings on amounts credited to the fund;

4 (4) All sums collected as water quality protection charges as provided in chapter 15.3 of
5 this title;

6 (5) All sums paid to the water development fund established pursuant to chapter 15.1 of
7 this title;

8 (6) All proceeds of bonds of the agency issued under this chapter to the extent required
9 by any trust agreement for such bonds;

10 (7) All other monies which are specifically designated for this fund, including, amounts
11 from gifts, bequests, administrative, civil and criminal penalties, or other funds from any public
12 or private sources; and

13 (8) Any other amounts required by the provisions of this chapter, or any other law or by
14 any trust agreement pertaining to bonds to be credited to the fund or which the agency in its
15 discretion shall determine to credit thereto.

16 (c) Except to the extent limited by law, and subject to the provisions of this chapter, and
17 to any agreements with the holders of any bonds of the agency or any trustee therefor, amounts
18 held by the agency for the account of the safe drinking water revolving loan fund shall be applied
19 by the agency, either by direct expenditure, disbursement, or transfer to one or more other funds
20 and accounts held by the agency or maintained under any trust agreement pertaining to bonds,
21 either alone or with other funds of the agency, to the following purposes:

22 (1) To provide financial assistance to local governmental units and to private water
23 companies to finance costs of approved projects, and to refinance the costs of such projects,
24 subject to terms and conditions, if any, as are determined by the department;

25 (2) To purchase or refinance debt obligations of the local governmental units and private
26 water companies, or to provide guarantees, insurance or similar forms of financial assistance for
27 such obligations;

28 (3) To fund reserves for bonds of the agency and to purchase insurance and pay the
29 premiums therefor, and pay fees and expenses of letters or lines of credit and costs of
30 reimbursement to the issuers thereof for any payments made thereon or on any insurance, and to
31 otherwise provide security for, and a source of payment for, by pledge, lien, assignment, or
32 otherwise bonds of the agency issued in accordance with this chapter; and

33 (4) (i) To pay expenses of the agency and the department in administering the fund and
34 the financial assistance programs of the agency authorized by this chapter. As part of the annual

1 appropriations bill, the department shall set forth the gross amount of expenses received from the
2 agency and a complete, specific breakdown of the sums retained and/or expended for
3 administrative expenses.

4 (ii) By way of illustration, not by limitation, in the personnel area, the breakdown of
5 administrative expenses should contain the number of personnel paid, the position numbers of the
6 personnel, and whether or not the position is a new position or a position which had been funded
7 previously by federal funds or a position which had been previously created but unfunded.

8 (d) Subject to any express limitation of this chapter pertaining to expenditure or
9 disbursement of funds or accounts held by the agency, funds or accounts held by the agency may
10 be transferred to any other fund or account held by the agency for the purposes of this chapter and
11 expended or disbursed for purposes permitted by such fund or account.

12 (e) Financial assistance provided for in this chapter can be provided to local
13 governmental units or water suppliers that do not have approved water system supply
14 management plans as required by chapter 46-15.3-5.1 or that are found not to be in compliance
15 with these plans only with the express finding by the department of health that such assistance is
16 necessary to protect the public health.

17 SECTION 7. Section 46-13.2-5 of the General Laws in Chapter 46-13.2 entitled "Drilling
18 of Drinking Water Wells" is hereby amended to read as follows:

19 **46-13.2-5. Record of wells.** -- (a) Within thirty (30) days after completion of a well, a
20 well drilling contractor shall provide the owner, the board, the department of health, and the
21 department of environmental management a record indicating:

- 22 (1) The well owner's name and address,
23 (2) The location of the well in a form that can be accepted directly into the Rhode Island
24 geographic information system,
25 (3) The well depth,
26 (4) The geologic materials and thickness of materials penetrated,
27 (5) The amount of casing,
28 (6) The static water levels, and
29 (7) Any other information which may be required by regulations adopted under this
30 chapter.

31 (b) A record for a drive point well where no earth materials are removed from the well
32 bore shall be sufficient if the owner's name, well location, depth, casing, static water level, and
33 screen data are indicated.

34 (c) After December 31, 2009, records required by this section must be submitted only

1 [through an Internet-based database system that will be made available by the department of](#)
2 [environmental management. Every effort should be made to integrate this database with any](#)
3 [database developed by the department of health as required by section 23-1-5.3.](#)

4 SECTION 8. Section 46-15-11 of the General Laws in Chapter 46-15 entitled "Water
5 Resources Board" is hereby amended to read as follows:

6 **46-15-11. Penalties and remedies.** -- (a) It shall be the duty of any person to comply
7 with any order issued pursuant to this chapter [and to chapter 46-15-3](#). If the person fails to
8 comply with the order within such time, if any, as may be specified, the order may be enforced by
9 the superior court, upon application made by the water resources board.

10 (b) Any person who willfully or negligently violates any provision of this chapter, or any
11 rule or regulation or other order promulgated by the water resources board, or any condition of
12 any permit issued pursuant to the chapter, is guilty of a misdemeanor and, upon conviction, shall
13 be subject to a fine of not more than five hundred (\$500) dollars for each separate offense or to
14 imprisonment for a period of not more than one year, or both.

15 (c) In addition to proceeding under any other remedy available at law or in equity for a
16 violation of any provision of this chapter, any rule or regulation pursuant to this chapter, or any
17 term or condition of any permit issued pursuant to this chapter, the water resources board may
18 assess a civil penalty upon a person for the violation. The penalty may be assessed whether or not
19 the violation was willful or negligent. When the water resources board assesses a civil penalty, it
20 shall inform the person of the amount of the penalty. The person charged with the penalty shall
21 then have thirty (30) days to pay the penalty in full or, if the person wishes to contest either the
22 amount of the penalty or the fact of the violation, the person shall, within the thirty (30) day
23 period, file an appeal of the action with the water resources board. Failure to appeal within thirty
24 (30) days shall result in a waiver of all legal rights to contest the violation or the amount of the
25 penalty. The maximum civil penalty which may be assessed pursuant to this section is five
26 thousand dollars (\$5,000) per day for each violation. Each violation for each separate day and
27 each violation of any provision of this chapter, any rule or regulation under this chapter, any order
28 of the water resources board, or any term or condition of a permit shall constitute a separate and
29 distinct offense under this section.

30 (d) The penalties and remedies prescribed shall be deemed concurrent, and the existence
31 of or exercise of any remedy shall not prevent the water resources board from exercising any
32 other remedy hereunder.

33 (e) Violations on separate days shall constitute separate offenses for purposes of this
34 chapter.

1 SECTION 9. Sections 46-15.2-4 and 46-15.2-5 of the General Laws in Chapter 46-15.2
2 entitled "Water Facilities Assistance Program" are hereby amended to read as follows:

3 **46-15.2-4. Water facilities assistance program established -- Eligibility.** -- (a) There is
4 hereby established in the water resources board a Rhode Island water facilities assistance
5 program. The board shall administer this program so as to ensure the proper and systematic
6 development of coordinated water supply and transmission facilities and shall expend the funds
7 available under this chapter in a manner that accomplishes this objective.

8 (b) This program shall provide twenty-five percent (25%) of the cost of approved water
9 transmission facilities designed and constructed to serve a single water system, and shall provide
10 fifty percent (50%) of the cost of approved intersystem facilities. Only the construction of water
11 transmission and intersystem facilities and the acquisition of land or rights-of-way, together with
12 necessary engineering and design, are eligible for assistance under this program. Costs of
13 borrowing, amortization costs, legal, and all other costs attendant to the funding of water
14 transmission and intersystem facilities are not eligible for financial assistance under this program
15 and must be fully borne by the project applicant. The cost of distribution facilities as defined in
16 this chapter are not eligible for financial assistance under this program. Determinations of project
17 eligibility shall be made by the water resources board.

18 (c) Only municipalities and quasi municipal water agencies [and other public water](#)
19 [authorities that are in substantial compliance with approved water supply management plans](#) are
20 eligible to apply for assistance under this program. Determinations of applicant eligibility shall be
21 made by the water resources board.

22 (d) Only projects reviewed and approved by the water resources board, the division of
23 public utilities and carriers, and the state planning council may be funded. Each project supported
24 by this program must be consistent with a plan adopted and kept current by the water resources
25 board in accordance with section 46-15-6 and with applicable elements of the state guide plan, as
26 adopted and kept current by the state planning council in accordance with section 42-11-10(c);
27 provided, however, that with respect to any project which has been approved by the board and
28 which thereafter becomes eligible to participate as an intersystem facilities project, the
29 submission to, and approval by, the public utilities commission and statewide planning council
30 shall not be required.

31 (e) Each transmission facility supported by this program must link a water source with a
32 water distribution system, both of which are complete and operational or will be so at the time
33 that the transmission facility is completed or is projected for future construction. The capacity of
34 both the water source and the distribution system must be adequate to meet present and future

1 needs, considering all other demands that may be placed on the same sources and distribution
2 systems. All determinations required under this subsection shall be made in a timely fashion by
3 the water resources board.

4 (f) The quality of water to be conveyed through the proposed transmission system must
5 meet the Rhode Island department of health requirements for the most restrictive current or
6 planned use. All reasonable measures to assure that this level of water quality will be maintained
7 must have been taken.

8 (g) The design and construction of an approved transmission facility must ensure that it
9 will remain operational for its design life with routine maintenance, and that it will resist all
10 external and internal forces that can be reasonably anticipated as determined by the water
11 resources board.

12 (h) The water resources board will ensure that maintenance of the transmission facility is
13 performed in a manner that ensures that it will remain operational throughout its design life and is
14 assured by a dedicated revenue such as a user fee or some other equally reliable means.

15 **46-15.2-5. Application to assistance program.** -- (a) Applicants shall submit projects
16 proposed for assistance under this program to the water resources board, in the form and content
17 prescribed by the board. The board shall coordinate the review and disposition of all applications
18 by all agencies concerned in an expeditious manner. The board shall incorporate the information
19 required by all agencies to conduct their review of proposals in its application documents.

20 (b) Upon receipt of an application, the board shall determine whether the application is
21 complete and contains all necessary information. Incomplete applications shall be returned to the
22 applicants. Complete applications shall be formally acknowledged by the board.

23 (c) The board shall forward a copy of each application accepted to the division of public
24 utilities and carriers, to the state planning council, to the department of health and to the
25 department of environmental management. Review of applications by these agencies shall be
26 conducted concurrently.

27 (d) The water resources board shall evaluate each application to determine whether all
28 requirements of sections 46-15-1 and 46-15-3 have been met, and shall further ensure that:

29 (1) Design and engineering of the project are sound, as provided in section 46-15.2-4(g);

30 (2) The applicant has adequately demonstrated that a need exists in its community for the
31 water that would be provided by the project;

32 (3) The project links a water source with a water distribution system, as set forth in
33 section 46-15.2-4(e);

34 (4) The distribution system owned or to be owned by the applicant has or will continue

1 to have sufficient capacity to carry the projected volumes of water, as set forth in section 46-15.2-
2 4(e);

3 (5) The proposed water source is adequate to meet the applicant's needs and will have
4 sufficient capacity to serve all future demands imposed by the applicant in combination with all
5 other users, as set forth in section 46-15.2-4(e);

6 (6) The quality of the water meets the standards established by the Rhode Island
7 department of health water quality regulations for the purpose intended, as provided in section
8 46-15.2-4(f);

9 (7) The project incorporates sound conservation techniques as provided in section 46-
10 15.1-5; and

11 (8) The project is properly related to all other water systems serving adjacent or nearby
12 areas in terms of interconnections and mutual support.

13 (9) The applicant is in substantial compliance with an approved water supply
14 management plan.

15 (e) The division of public utilities and carriers shall review the financing aspects of all
16 projects, particularly with respect to costs that will be imposed on water users as a result of the
17 project. The division shall perform an analysis of the proposed costs and benefits of the project
18 and shall, on the basis of its findings, make a determination as to whether approval of the project
19 is in the best interests of the water users. If the division determines the project is in the best
20 interests of the water users, it shall approve the project. If the division determines that the project
21 is not in the best interests of the water users, it shall disapprove the project. Since the division's
22 review must be based on estimated costs and interest rates, the full financing costs will not be
23 precisely known. The absence of specificity concerning the finance of costs must be considered
24 by the division.

25 (f) The state planning council shall review all proposed projects to determine whether
26 they are consistent with all relevant elements of the state guide plan. Upon determination that a
27 project is consistent with all relevant elements of the state guide plan, the state planning council
28 shall render its approval. Upon a determination that the project is not consistent with all relevant
29 elements of the state guide plan, the council shall disapprove the project. The state planning
30 council will provide the policy framework necessary to guide this program through the state guide
31 plan.

32 SECTION 10. Sections 46-15.3-3, 46-15.3-5.1, 46-15.3-11, 46-15.3-15, 46-15.3-20, 46-
33 15.3-21, 46-15.3-22 and 46-15.3-24 of the General Laws in Chapter 46-15.3 entitled "Public
34 Drinking Water Supply System Protection" are hereby amended to read as follows:

1 **46-15.3-3. Purposes and powers.** -- The purposes of the board and the suppliers under
2 this chapter shall be to protect the quality and safety [and to ensure the efficient and reasonable](#)
3 [use](#) of the public drinking water supply. In carrying out the foregoing purposes the board shall
4 have, in addition to the powers granted in this chapter, all of the powers enumerated in chapter
5 15.1 of this title, and shall have the power to acquire interests in land in the manner provided in
6 section 46-15.1-5, but in exercising these powers, the board shall not be subject to any limitation
7 on the use of funds contained in section 46-15.1-19.

8 **46-15.3-5.1. Water supply systems management plans.** -- (a) All parties involved in the
9 supply, transmission, and/or distribution of drinking water shall prepare, maintain, and carry out a
10 water supply system management plan as described by this chapter. This requirement applies,
11 without limitations, to:

12 (1) All municipalities subject to chapter 22.2 of title 45, the Comprehensive Planning
13 and Land Use Regulation Act. The water supply management plan [of any water supplier](#)
14 [providing service in any municipality](#) shall be part of the Services and Facilities Element [of the](#)
15 [plan for that municipality](#) required by section 45-22.2-6(6);

16 (2) All municipalities, municipal departments and agencies, districts, authorities or other
17 entities engaged in or authorized to engage in the supply, treatment, transmission, or distribution
18 of drinking water on a wholesale or retail basis, referred to herein as "water suppliers" , which
19 obtain, transport, purchase, or sell more than fifty million (50,000,000) gallons of water per year.

20 (b) A water supply system management plan shall be prepared in the format, and shall
21 address each of the topics, listed in this section, to the extent that each is relevant to the
22 municipality or water supplier, the water source(s), the water system(s), and the area served or
23 eligible to be served. Notwithstanding any other provisions of this chapter, water supply
24 management plans shall be in conformity with all applicable provisions of the Federal Safe
25 Drinking Water Act [42 U.S.C. section 300f et seq.] chapter 13 of this title, Public Drinking
26 Water Supply, and chapter 14 of this title, Contamination of Drinking Water, as administered by
27 the department of health. Any other topic of interest may be included.

28 (c) A water supply system management plan shall include, without limitation, the
29 following components:

30 (1) The water supply management component of the water supply system management
31 plan shall include, without limitation:

32 (i) A statement of the goals that the plan is designed to achieve [which shall at a](#)
33 [minimum include specific goals to achieve: \(1\) the numeric standard established by the](#)
34 [department of environmental management under subsection 42-17.1-2\(34\) to protect the integrity](#)

1 and reasonable use of water resources; (2) the demand management standards set by the water
2 resources board; (3) supply development as necessary and appropriate; and (4) reduction of non-
3 account water to twelve and one-half percent (12.5%) by December 31, 2012 and to ten percent
4 (10%) by December 31, 2017;

5 (ii) A description of the water system(s) covered, including sources of water, the service
6 area, present and anticipated future users, and other important characteristics;

7 (iii) Data collection in a form that can be accepted directly into the Rhode Island
8 Geographic Information System. Monitoring of system operations shall be performed at intervals
9 approved by the director of the department of environmental management in coordination with
10 the office of strategic planning of the division of planning so as to evaluate all critical aspects of
11 the system, compare performance with capabilities and expectations, and provide a basis for
12 continuing water supply planning at the system, municipal, regional, and state levels;

13 (iv) Demand management measures that will achieve a high level of efficiency in the use
14 of a limited resource, through the application of metering of one hundred percent (100%) of the
15 water used; sanitary device retrofit; ~~technical assistance to and~~ requiring performance of water
16 use audits for major industrial, commercial, institutional, government, and agricultural and other
17 outdoor water users; education and information; and use of appropriate fees, rates, and charges to
18 influence use; Demand management measures shall include such restrictions on use as may be
19 necessary to meet or exceed limitations on seasonal use and annual average per capita residential
20 consumption that are established by the water resources board. The water resources board shall,
21 no later than December 31, 2008, establish by rule standards for such restrictions and demand
22 management measures, which may as appropriate take into account differing conditions among
23 watersheds and water supply areas while recognizing that water is a shared resource;

24 (v) System management measures to insure that the following elements are optimally
25 operated and maintained, including: leak detection and repair; ~~meter~~ installation or automatic
26 meter reading systems as expeditiously as feasible, and meter replacement as necessary to provide
27 accurate measurement; and frequency of reading meters. Maintenance or reduction of non-
28 account water to stated goals shall be considered an essential component of system management;

29 (vi) Supply management measures to insure present and future availability of drinking
30 water in adequate quantity and quality, including protection of the capacity and quality of
31 drinking water sources; retaining water sources for standby or future use that are or can be
32 improved to drinking water quality; reactivation of any water sources not in use; interconnection
33 of systems for ongoing, standby, or emergency use; supply augmentation to the extent that the
34 system is not already in compliance with the standards established by the department of

1 [environmental management under subsection 42-17.1-2\(34\), the plan shall include a plan to come](#)
2 [into compliance with such standards where applicable ;](#)

3 (vii) Emergency management, including risk assessment; responses to temporary or
4 permanent loss of supplies due to natural or manmade causes; extraordinary treatment processes;
5 interruptions in the delivery system; and contamination of water sources or delivery systems;

6 (viii) The water supply system management plans of water suppliers shall document that
7 coordination has been accomplished with those plans of other suppliers in the vicinity and with
8 operators of wastewater treatment and disposal facilities serving all or part of the same area or
9 that a good faith effort to do so has been made. Plans shall be consistent with applicable local
10 comprehensive plans and shall be integrated into the water supply plans of the municipality or
11 municipalities in which the service area is or is planned to be located. Conversely, the local
12 comprehensive plans shall be consistent with water supply plans [specifically, local](#)
13 [comprehensive plans and the local ordinances necessary to implement these plans shall be](#)
14 [consistent with the demand management sections of relevant water supply system management](#)
15 [plans;](#)

16 (ix) Water supply system management plans shall designate the person or organization
17 responsible for taking each action, others who must participate, and the time period in which each
18 action is to be taken. The capital, operating, and maintenance cost (if any) of each action shall be
19 estimated and the anticipated source of funds shall be identified;

20 (x) Water suppliers subject to this chapter shall utilize methods to implement
21 management measures necessary to achieve the findings, intent, and objectives of this chapter.
22 The water supplier may be required to document the validity or effectiveness of any management
23 measure, implementation method, or other provision or action included in its plan.

24 (2) The water quality protection component of the water supply system management
25 plan shall include, without limitations, those items enumerated in section 46-15.3-7.

26 (3) The leak detection and repair component of the water supply system management
27 plan shall include, without limitation:

- 28 (i) Methodology for leak detection;
- 29 (ii) Detailed program for the conducting of required repairs to the water supply system;
- 30 (iii) Impact assessment studies on the ability of the supplier to provide for peak demand
31 services;

32 (iv) A priority list of actions for implementing these management measures;

33 (v) Every supplier of public water encompassed under this section shall conduct periodic
34 leak detection consistent with stated goals for non-account water, however no less frequently than

1 once every ten (10) years.

2 **46-15.3-11. Disbursements from the funds.** -- (a) Only suppliers ~~which~~ that withdraw
3 water from wells, reservoirs, springs, or other original sources of potable water and that are in
4 substantial compliance with an approved water supply system management plan, as determined
5 by the water resources board shall be entitled to disbursements from the first of the two (2)
6 mentioned funds created under section 46-15.3-10 administered by the water resources board.
7 From amounts available from bond proceeds held by the water resources board, that board shall
8 disburse to each supplier contributing to the fund a proportional amount based upon each
9 supplier's pro rata withdrawal of water by volume from wells, reservoirs, springs, or other
10 original sources of water averaged over the three (3) calendar years preceding disbursement as
11 determined by the water resources board. Suppliers shall be required to expend this money as
12 follows:

13 (1) Not less than fifty-five percent (55%) shall be spent for acquisition of land or rights
14 in land or physical improvements to acquired land required to protect the quality of raw water of
15 the water supply system. Expenditures for maintenance, administration, and payment of taxes on
16 land acquired under this chapter shall be included within this subdivision.

17 (2) Any remaining funds may be used for any eligible expenditures as defined in section
18 46-15.3-4.

19 (b) The city of Providence shall make expenditures from amounts available in the fund
20 held by the city of Providence based on the same formula as in subdivisions (a)(1) and (a)(2)
21 above; provided that the Providence water supply board is in substantial compliance with an
22 approved water supply system management plan, as determined by the water resources board, and
23 provided, however, the city of Providence shall be exempt from participating in the use of an
24 alternate deicing mixture within the Scituate watershed unless drinking water supply sodium
25 levels exceed fifteen (15) ppm (parts per million) for three (3) consecutive years or seventeen
26 (17) ppm (parts per million) for one year. The city of Providence will monitor sodium levels and
27 report sodium testing results to the Rhode Island department of health and the public on a yearly
28 basis. If drinking water supply sodium levels exceed fifteen (15) ppm for three (3) consecutive
29 years or seventeen (17) ppm for one year, the city of Providence shall immediately participate in
30 the use of an alternative deicing mixture within the Scituate watershed. In December of 2008, the
31 city of Providence will provide a three (3) year report to the Rhode Island department of
32 environmental management, the general assembly and the public. Every three (3) years, the city
33 of Providence will submit a report to the general assembly on monitoring data for sodium levels
34 within the Scituate watershed. This report will include monitoring data from the previous three

1 (3) year period.

2 (c) In making decisions about the expenditure of money under the provisions of this
3 chapter, suppliers shall take into account the following factors:

4 (1) The likelihood of development of the specific parcel proposed for acquisition;

5 (2) The existing land uses, as well as the likelihood of development, in the watershed;

6 (3) The potential threat to public drinking water sources posed by development in the
7 watershed including, but not limited to, the intensity of development, the types of land uses,
8 proximity to reservoirs and/or well heads, and the buffering and filtration capacity of the natural
9 systems;

10 (4) Whether alternative protection measures are available and/or have been attempted,
11 including local land use regulations;

12 (5) The number of persons who presently depend on the sources for their drinking water,
13 as well as the number of persons who may depend on it in the future;

14 (6) The anticipated cost of the parcel proposed to be purchased, and whether less than a
15 fee interest may be acquired which would reduce the cost significantly while still providing
16 protection to the source;

17 (7) Other cost effectiveness considerations, including whether protection of the source
18 can be provided by the construction of physical improvements;

19 (8) Whether acquisition of the specific parcel, and the protection of the watershed of
20 which it is a part, is consistent with other planning considerations;

21 (9) Proposed management techniques for the parcel proposed to be acquired which will
22 maximize its capacity to protect the source.

23 (d) The costs of issuance of notes and bonds authorized by section 46-15.3-10 may be
24 payable from any monies in the water quality protection funds.

25 **46-15.3-15. Actions by the water resources board.** -- (a) The water resources board
26 shall review the evidence of implementation provided with each water supplier's ~~thirty (30)~~
27 ~~month~~ annual report and such other information as may be relevant and determine whether water
28 supply system management plan implementation is sufficient to achieve the objectives of this
29 chapter. Should the water resources board find that plan implementation is not sufficient to
30 substantially achieve the objectives of this chapter, a determination of noncompliance shall be
31 made and an order may be issued, as provided in section 46-15-8 and may be enforced as
32 provided in section 46-15-11 or as otherwise allowed by law.

33 (b) The water resources board shall publish at least once per year a list of all water
34 suppliers found in noncompliance for insufficient implementation pursuant to subsection (a)

1 [above, and all water suppliers found in noncompliance with the requirement to have an approved](#)
2 [plan pursuant to section 46-15.3-5.1, in: \(i\) a newspaper of general circulation in the state; and \(ii\)](#)
3 [a local newspaper or newspapers that cover the geographic areas served by the water suppliers](#)
4 [found in noncompliance.](#)

5 **46-15.3-20. Enforcement.** -- (a) The water resources board ~~shall~~ may forward any
6 determination of non-compliance made pursuant to sections 46-15.3-7.5, 46-15.3-7.6 and 46-
7 15.3-15 to the division of public utilities and carriers. The division of public utilities and carriers
8 shall consider such determinations of non-compliance as a complaint under section 39-4-3.

9 (b) The order of the division of public utilities and carriers may be appealed pursuant to
10 section 39-5-1.

11 **46-15.3-21. Fees, rates and charges.** -- (a) The fees, rates, and charges for drinking
12 water are a mandatory component of water supply system management.

13 (b) The following factors shall be considered in setting fees, rates, and charges:

14 (1) Recovery of all capital and operating costs, fixed and variable of production,
15 conservation, [programs, including, but not limited to, development of water use restrictions,](#)
16 [education about reducing water use and enforcement of any conservation standards,](#) use,
17 management, protection, obtaining, development, procuring, and/or transporting water, and its
18 sale at wholesale or retail;

19 (2) Marginal cost pricing;

20 (3) Emergency and drought period surcharges;

21 (4) Seasonal price structures [and the need to reduce seasonal use increases;](#)

22 (5) Difference in costs based upon different points of delivery;

23 (6) The effect of fees, [conservation](#) rates, and charges on use of water and, where
24 applicable, on wastewater costs and charges;

25 (7) The effect of reducing non-account water to levels consistent with stated goals;

26 (8) Preparing, maintaining and implementing water supply system management
27 programs; and

28 (9) Notwithstanding any other provisions of law, the Providence water supply board
29 shall transfer to the general fund of the city of Providence an amount equal to five percent (5%)
30 per annum times the annual gross revenues of the Providence water supply board for the fiscal
31 year ending June 30, 2004, and for the next two (2) succeeding fiscal years. This transfer shall not
32 be included as part of the Providence water supply board's rates approved by a final unappealable
33 order of the public utilities commission for the same three (3) fiscal years.

34 (c) Notwithstanding the provisions of sections 39-2-2 and 39-2-5, all rates and charges

1 made by water suppliers which decline as quantity used increased are hereby declared to be no
2 longer conducive to sound water supply system management designed to properly conserve,
3 develop, utilize, and protect this finite natural resource. The public utilities commission may
4 order rates for suppliers of water which either do not vary with quantities used or when there is
5 evidence of increasing costs to either the utility or to society, rates which increase as the quantity
6 used increases. If the commission finds that changing rates to comply with this section will cause
7 a hardship to a class of customers, the commission may order that rates for that class of customers
8 be changed to comply with this section over a period of time not to exceed five (5) years.

9 (d) Notwithstanding the provisions of sections 39-2-2 and 39-2-5, the public utilities
10 commission may order a reduction in rates consistent with the amount by which a supplier
11 exceeds the stated goals for non-account water. "Non-account water" shall be defined as the
12 difference between the metered supply and the metered consumption for a specific period
13 including an allowance for firefighting. No estimates for non-metered usage, except for the
14 firefighting allowance, shall be included in the calculation of accounted for water.

15 **46-15.3-22. Billing and collection of fees, rates, and charges.** -- (a) Financial support of
16 water supply and provision of timely and accurate information on costs to users are mandatory
17 components of water supply system management.

18 (b) Bills shall be rendered on a regular schedule for metered usage in the immediately
19 preceding time period. Water suppliers selling water to other water suppliers or at retail shall
20 meter all water delivered and shall maintain and replace meters in accordance with their
21 management plans. Water suppliers shall formulate and carry out a program for installation of
22 ~~remote reading or~~ automatic meter reading systems. These programs shall be carried out not later
23 than ~~July 1, 1996~~ December 31, 2010.

24 (c) Water suppliers shall develop programs for recording metered usage and billing
25 thereafter, at least quarterly an interval less than one year as determined appropriate, not later
26 than July 1, 2001. Alternatively, water suppliers must demonstrate that less frequent than
27 quarterly annual meter reading and billing is consistent with the purposes of this chapter.

28 (d) Unless the water supplier already engages in joint billing activities, a water supplier
29 selling water at retail shall conduct feasibility studies of joint billing for water supply and
30 wastewater treatment and disposal in cooperation with all parties responsible for the latter service
31 within the same water supply service area. The water supplier shall evaluate arrangements with
32 municipalities and wastewater treatment and disposal agencies for operation of a combined
33 billing system, including equitable sharing of costs.

34 **46-15.3-24. Financing water supply system management.** -- (a) The cost of water

1 supply system management planning and water supply system management as required by this
2 chapter shall be financed as follows:

3 (1) The cost of preparing and maintaining water supply system management plans as
4 required by section 46-15.3-5.1(A)(1) shall be paid by the municipality from any funds made
5 available under chapter 22.2 of title 45 or from any other funds used to prepare, maintain, and
6 amend local comprehensive plans. Expenses incurred in conducting these activities are exempt
7 from reimbursement as a state mandate under sections 45-13-6 through 45-13-10;

8 (2) The cost of preparing and maintaining water supply system management plans and
9 carrying out water supply system management programs as required by section 46-15.3-
10 5.1(A)(2), shall be paid from charges against water users. Such charges shall be limited to those
11 necessary and reasonable to undertake the actions required by this chapter, and shall be included
12 in bills rendered in accordance with section 46-15.3-21(b);

13 (b) A public or private utility, under the jurisdiction of the public utilities commission,
14 providing water service may file with the public utilities commission proposed rates and charges,
15 including emergency rate relief, so as to provide for the necessary and reasonable costs of
16 carrying out the requirements of this chapter. The public utilities commission shall hear and
17 decide such requests as provided by title 39, and shall allow adjustments in rates necessary to
18 offset necessary and reasonable reductions in revenues resulting from implementation of a water
19 supply system management program;

20 (c) ~~Water utilities will~~ Suppliers of public drinking water shall be operated as enterprise
21 funds by no later than the end of fiscal year 2011, as financially self-supporting agencies,
22 suppliers ~~and~~ shall maintain revenue levels sufficient to cover all fixed and variable capital and
23 operating costs of conservation, use, management, protection, development and other costs of
24 water supply ~~and may be allowed a reasonable profit.~~ As an enterprise fund, suppliers should be
25 viewed as a business, meeting the public purposes of state law, owned by a municipality and/or a
26 special use district rather than as a general municipal or special use district department or subset
27 funded by tax revenues. No funds shall be transferred from the utility enterprise fund unless it is
28 for the payment or reimbursement of services provided by the municipality or the special use
29 district. Any excess revenues generated shall be accounted for in the system and those remaining
30 after a three (3) year period shall be deposited in the replacement or other reserve accounts of the
31 enterprise fund. Appropriate business principles related to cost identification, cost effectiveness,
32 financial stability, and financial reporting should be followed by the utility.

33 SECTION 11. Chapter 46-15.6 of the General Laws entitled "Clean Water Infrastructure"
34 is hereby amended by adding thereto the following section:

1 **46-15.6-10. Conservation and revenue stabilization program.** -- (a) The rates of water
2 suppliers as defined in section 46-15.6-3 shall be adequate to pay for all costs associated with
3 water supply, including, but not limited to:

4 (1) Acquisition, treatment, transmission, distribution and availability of water;

5 (2) System administration and overhead, including the cost and/or value of all services
6 and facilities provided by the city or town to the water supplier, including, but not limited to,
7 testing, operation, maintenance, replacement, repair, debt service, and reasonable compensation
8 to the city or town for the fair value of all facilities provided by the city or town, including, but
9 not limited to, supply, production, treatment, transmission, and administration facilities;

10 (3) Programs for the conservation and efficient use of water, including costs of
11 developing, implementing, enforcing and evaluating such conservation programs and including
12 conservation pricing as described in subsection (c);

13 (4) Annual operating reserves of at least two and one-half percent (2.5%) of annual gross
14 revenues by the conclusion of fiscal year 2009 and at least five percent (5%) of annual gross
15 revenues by the conclusion of fiscal year 2010;

16 (5) Capital reserves to provide for system maintenance and repair and replacement of at
17 least ten percent (10%) of annual gross revenues by the conclusion of fiscal year 2009 and at least
18 twenty percent (20%) of annual gross revenues by the conclusion of fiscal year 2010;

19 (6) Revenue stabilization to cover costs as effective conservation programs reduce waste,
20 as described in subsection (c); and

21 (7) Such debt service reserves as are reasonable.

22 (b) Each water supplier shall establish a revenue stabilization account for the purpose of
23 maintaining revenues sufficient to compensate that supplier for reasonable expenses if revenues
24 decline as a result of implementing water conservation programs, and shall accumulate funds in
25 the revenue stabilization account of between ten percent (10%) and fifteen percent (15%) of the
26 average annual operating expenses of the supplier. Monies in such revenue stabilization accounts,
27 and any interest thereon, shall remain in the revenue stabilization accounts and shall be used to
28 supplement other revenues so that the supplier's reasonable costs are compensated. A supplier
29 may draw upon its revenue stabilization account if revenues in any fiscal year fall below the level
30 sufficient to provide reasonable compensation for services rendered.

31 (c) Water suppliers are encouraged to take aggressive action to reduce waste of water and
32 to reduce seasonal increases in the use of water, and may adopt conservation pricing or otherwise
33 revise their rates as a means to achieve those goals. The purpose of conservation pricing is to
34 protect the long-term interests of water consumers by reducing the need for expensive new

1 supply, reducing waste so that water use is sustainable over the long-term, and by making water
2 available for important public purposes, with the long-term goal of controlling costs while
3 assuring that water needs are met. For the purpose of encouraging conservation of water,
4 suppliers are authorized to request increased rates based on quantity used either throughout the
5 year or seasonally. Revenues generated from the adoption of conservation pricing that are in
6 excess of reasonable costs shall be used for rate relief for residential customers designed to make
7 a basic level of water use affordable or to fund the revenue stabilization account described in
8 subsection (b) or to fund the other accounts and reserves described in this section. Rate increase
9 proposals under this section shall be evaluated based on whether they are reasonably likely to
10 reduce demand and not based on any other standard.

11 SECTION 12. Sections 46-15.7-1 and 46-15.7-3 of the General Laws in Chapter 46-15.7
12 entitled "Management of the Withdrawal and Use of the Waters of the State" are hereby amended
13 to read as follows:

14 **46-15.7-1. Legislative findings and declaration.** -- (a) The general assembly finds that:

15 (1) The constitution of the state of Rhode Island charges the general assembly with
16 responsibility for the conservation of all natural resources, including water.

17 (2) The supply of fresh water available to the people of Rhode Island for use in their
18 daily lives and to support agriculture, hydropower, indigenous wildlife and plant species,
19 navigation, water-based recreation, wetlands, and other uses is finite and is not equally available
20 or accessible throughout the state.

21 (3) A significant portion of the fresh water resource of the state is already being used to
22 serve a variety of needs and purposes and the total volume and quality of the remaining fresh
23 water resource of the state is subject to quantitative, qualitative, or geographic constraints on its
24 availability or use.

25 (4) Allocation of the water resource of Rhode Island has thus far been accomplished on a
26 random, first come, first served, or ad hoc basis with minimal or no consideration given to overall
27 allocation of the resource so as to meet all present and foreseeable future needs.

28 (5) All of the data needed to properly manage the allocation and use of the water
29 resource of the state are not available. The responsibility to provide essential data rests primarily
30 upon those who withdraw and use the waters of the state.

31 (6) In the summer months, many water suppliers experience peak demands that are
32 significantly higher than during the winter months.

33 (7) The summer demand is driven in large part by residential outdoor water use, in
34 particular for lawn irrigation.

1 (8) It is more cost efficient to reduce demand than to increase supply through new water
2 supply projects.

3 (b) Therefore, the general assembly declares that:

4 (1) Management of the amounts, purposes, timing, locations, rates, and other
5 characteristics of fresh water withdrawals from ground or surface waters is essential in order to
6 protect the health, safety, and general welfare of the people of the state of Rhode Island, to
7 promote the continued existence, diversity, and health of the state's native wildlife and plant
8 species and communities, and the fair and equitable allocation of the water resource among users
9 and uses, and to insure that long-range rather than short-range considerations remain uppermost.

10 (2) To support these objectives adequate data is essential to determine the capabilities of
11 the state's water resources to support various uses and users and the quantities of water needed for
12 these uses.

13 (3) This requirement shall be carried out by management of fresh water resources of the
14 state based on long-range planning for and conservation of these resources; fairness, equitable
15 distribution, and consideration for all human uses; matching the use of water with the quality of
16 water necessary for each use, giving priority to those uses that require the highest quality water;
17 maintenance of native aquatic and terrestrial animal and plant species, populations, and
18 communities and statewide diversity; continued upholding of and improvement in the quality of
19 the environment and especially of the water resources itself; and careful integration with all other
20 social, economic, and environmental objectives, programs, and plans of the state.

21 (4) The water resources board is the state agency ~~which~~ that manages the withdrawal and
22 use of the waters of the state of Rhode Island and that defines reasonable use under the public
23 purposes of state law.

24 (5) With regard to agriculture, it is a priority of the state to preserve agriculture; securing
25 this state priority involves allocation of water resources in a manner that provides for agricultural
26 sustainability while recognizing the importance of other water uses, and accordingly, in any
27 program by which water withdrawals may be allocated by the board pursuant to its powers,
28 including, but not limited to, powers set forth in chapters 15, 15.1, 15.3 and 15.7 of this title, the
29 board shall give priority to commercial agricultural producers, as defined in section 46-15.3-4(2),
30 that have adopted and implemented an agricultural water withdrawal management plan which has
31 been approved by the department of environmental management, division of agriculture,
32 consistent with duly adopted plans and estimates regarding the aggregated supply available from
33 the affected water resource. In putting into effect the purposes of this subdivision, the board shall
34 consider the reduction in water withdrawal that has resulted from the implementation of an

1 agricultural water withdrawal management plan as a credit against any reduction in water
2 withdrawal which would otherwise be required; and to the extent not inconsistent:

3 (i) With the board's obligations to assure drinking water supplies under chapter 15.3 of
4 this title and water supplies for fire protection; and

5 (ii) With federal and state law, the board shall allow commercial agricultural producers
6 to continue to irrigate commercial crops either in fields or greenhouses, notwithstanding a critical
7 dry period.

8 **46-15.7-3. Functions of the water resources board.** -- Actions authorized or directed by
9 this section must be taken in accordance with the Administrative Procedures Act, chapter 35 of
10 title 42.

11 (1) The board shall adopt by rule standards and procedures for implementation of the
12 requirements of this chapter that are consistent with applicable statutes.

13 (2) The board shall conduct a comprehensive and detailed inventory of the water
14 resources of this state, and shall maintain the inventory on a current and valid basis.

15 (i) The purpose of this inventory shall be to establish the quantity of water existing in
16 every water source, the quantity that is being used or is needed for every significant purpose, as
17 listed in section 46-15.7-1(a)(2) preceding, and the quantity that is available to support other uses.

18 (ii) The board shall use data available from state and federal agencies, local
19 governments, elements of the state guide plan, water supply system management plans, persons
20 who withdraw water, and any other valid information that contributes to accomplishing the
21 purpose of this chapter. It is the responsibility of each water user to provide data, or the best
22 available estimates, on their water withdrawals.

23 (iii) The board shall gather any other information that will assist it in determining the
24 capability of the state's water resource to support various uses and users, and the quantities of
25 water being used to support these. All of the uses and users listed in section 46-15.7-1(a)(2) and
26 any others that are relevant shall be included. The board is explicitly directed to promulgate
27 regulations, no later than July 31, 2009, to require all self-supplied users that withdraw more than
28 three (3) million gallons per year (>8,200 gallons/day or >740,000 gallons over a three (3) month
29 period) to report their monthly use on an annual basis. Any such user, including users designated
30 in subdivision 46-15.7-1(b)(5), failing to report as required may be assumed, for the purposes of
31 water allocation, to have no water requirements.

32 (3) The board shall identify any water source where existing uses and users are shown to
33 have reached or threaten to approach or exceed ~~the safe yield of that source.~~ The standard
34 promulgated by the department of environmental management under subsection 42-17.1-2(34).

1 SECTION 13. This act shall take effect upon passage.

=====
LC02051
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO WATERS AND NAVIGATION - CLEAN WATER

1 This act would amend certain provisions of law relevant to the management of the
2 withdrawal and use of the waters of the state.

3 This act would take effect upon passage.

=====
LC02051
=====