

2022 -- H 8307

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LC006015
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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2022

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A N A C T

RELATING TO WATERS AND NAVIGATION -- COASTAL RESOURCES MANAGEMENT
COUNCIL

Introduced By: Representatives Ruggiero, Handy, Carson, Speakman, Cortvriend,
Batista, Kazarian, McGaw, Edwards, and Craven

Date Introduced: June 01, 2022

Referred To: House State Government & Elections

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 46-23-20, 46-23-20.1, 46-23-20.2, 46-23-20.3 and 46-23-20.4 of the
2 General Laws in Chapter 46-23 entitled "Coastal Resources Management Council" are hereby
3 amended to read as follows:

4 **46-23-20. Administrative hearings.**

5 (a) All contested cases, all contested enforcement proceedings, and all contested
6 administrative fines shall be heard by the administrative hearing ~~officers, or by subcommittees~~
7 officer, except for federal consistency decisions as set forth below and as provided in § 46-23-20.1,
8 pursuant to the regulations promulgated by the council; provided, however, that no proceeding and
9 hearing prior to the appointment of the hearing ~~officers~~ officer shall be subject to the provisions of
10 this section. Notwithstanding the foregoing, the ~~commissioner~~ executive director of coastal
11 resources management shall be authorized, in his or her discretion, to resolve contested licensing,
12 penalty and enforcement proceedings through informal disposition pursuant to regulations
13 promulgated by the council.

14 (b) All contested cases, contested enforcement proceedings, and contested administrative
15 fines except federal consistency decisions pursuant to this chapter shall not be heard or issued
16 without a hearing at which the public shall have full access to observe and shall be allowed a
17 reasonable opportunity to testify and/or offer written testimony so long as the testimony is related
18 to the proceeding. All federal consistency decisions shall be made by the executive director or the

1 [council or after a hearing before the council.](#)

2 ~~46-23-20.1. Hearing officers --- Appointment --- Compensation --- Subcommittee~~
3 **Hearing officer -- Appointment -- Compensation --Subcommittee.**

4 (a) The governor, with the advice and consent of the senate, shall appoint ~~two (2)~~ [one](#)
5 hearing ~~officers~~ [officer](#) who shall be ~~attorneys-at-law~~ [an attorney at law](#), who, prior to ~~their~~
6 appointment, shall have practiced law for a period of not less than five (5) years for a term of five
7 (5) years; ~~provided, however, that the initial appointments shall be as follows: one hearing officer~~
8 ~~shall be appointed for a term of three (3) years and one hearing officer shall be appointed for a term~~
9 ~~of five (5) years. The appointees shall be addressed as hearing officers.~~

10 (b) ~~The governor shall designate one of the hearing officers as chief hearing officer.~~ The
11 hearing ~~officers~~ [officer](#) shall hear proceedings as provided by this section, and the council, with the
12 assistance of the ~~chief~~ hearing officer, may promulgate such rules and regulations as shall be
13 necessary or desirable to effect the purposes of this section.

14 (c) A hearing officer shall be devoted full time to these administrative duties, and shall not
15 otherwise practice law while holding office nor be a partner nor an associate of any person in the
16 practice of law.

17 (d) Compensation for [the](#) hearing ~~officers~~ [officer](#) shall be determined by the unclassified
18 pay board.

19 (e) ~~Whenever~~ [In case of a contested federal consistency decision](#) the chairperson of the
20 coastal resources management council or, in the absence of the chairperson, the ~~commissioner of~~
21 ~~coastal resources makes a finding that the hearing officers are otherwise engaged and unable to~~
22 ~~hear a matter in a timely fashion, he or she~~ [executive director](#) may appoint a subcommittee which
23 will act as hearing ~~officers in any contested case coming before the council~~ [officer](#). ~~The~~
24 ~~subcommittee shall consist of at least one member; provided, however, that in~~ [In](#) all contested
25 [federal consistency](#) cases an additional member shall be a resident of the coastal community
26 affected, [if a individual community is specifically impacted](#). The city or town council of each
27 coastal community shall, at the beginning of its term of office, appoint a resident of that city or
28 town to serve as an alternate member of the aforesaid subcommittee [for federal consistency](#)
29 [decisions](#) should there be no existing member of the coastal resources management council from
30 that city or town available to serve on the subcommittee. Any member of the subcommittee actively
31 engaged in hearing a case shall continue to hear the case, even though his or her term may have
32 expired, until the case is concluded and a vote taken thereon. Hearings before subcommittees shall
33 be subject to all rules of practice and procedure as govern hearings before [the](#) hearing ~~officers~~
34 [officer](#).

1 **46-23-20.2. Clerk.**

2 The ~~commissioner~~ executive director of coastal resources or his or her designee shall serve
3 as clerk to the hearing ~~officers~~ officer. The clerk shall have general charge of the office, keep a full
4 record of proceedings, file and preserve all documents and papers, prepare such papers and notices
5 as may be required, and perform such other duties as required. The ~~commissioner~~ executive director
6 shall have the power to issue subpoenas for witnesses and documents and to administer oaths in all
7 cases before any hearing officer or pertaining to the duties of his or her office.

8 **46-23-20.3. Prehearing procedure.**

9 (a) Prior to the commencement of any hearing, the hearing officer may in his or her
10 discretion direct the parties or their attorneys to appear before him or her for such conferences as
11 shall be necessary. At the conferences, the hearing officer may order any party to file, prior to the
12 commencement of any formal hearing, exhibits that the party intends to use in the hearing, and the
13 names and addresses of witnesses that the party intends to produce in its direct case, together with
14 a short statement of the testimony of each witness. Following entry of an order, a party shall not be
15 permitted, except in the discretion of the hearing officer, to introduce into evidence, in the party's
16 direct case, exhibits which are not filed in accordance with the order. At the conference, the hearing
17 officer may designate a date before which he or she requires any party to specify what issues are
18 conceded, and further proof of conceded issues shall not be required. The hearing officer shall also
19 require the parties to simplify the issues, to consider admissions of fact and of documents which
20 will avoid unnecessary proof, and to limit the number of expert witnesses. The hearing officer shall
21 enter an order reciting the concessions and agreements made by the parties, and shall enter an order
22 on such other matters as are pertinent to the conduct of the hearing, and unless modified, the hearing
23 shall be conducted by the order.

24 (b) The hearing officer may also order the parties to file, prior to the commencement of
25 any hearing, the testimony of any or all of their respective witnesses, and to submit the testimony
26 to the hearing officer and the opposing party or the opposing counsel by such date as the hearing
27 officer shall determine. The witness shall testify under oath, and all of the testimony shall be in a
28 question and answer format. Save for good cause shown, said testimony shall be the direct
29 examination of the witness; provided, however, that the witness shall be available at the hearing
30 for cross-examination by the opposing party or opposing counsel.

31 (c) The council, with the assistance of the ~~chief~~ hearing officer, shall promulgate, by
32 regulation, such other prehearing procedures and/or hearing procedures as deemed necessary,
33 including the use of portions of the superior court civil rules of discovery where such are not
34 inconsistent with the applicable provisions of the Administrative Procedures Act, chapter 35 of title

1 42.

2 **46-23-20.4. Hearings -- Orders.**

3 (a) Subject to the provisions of this chapter, every hearing for the adjudication of a violation
4 or for a contested matter shall be held before a hearing officer ~~or a subcommittee. The chief hearing~~
5 ~~officer shall assign a hearing officer to each matter not assigned to a subcommittee,~~ except for
6 federal consistency cases. After due consideration of the evidence and arguments, the hearing
7 officer shall make written proposed findings of fact and proposed conclusions of law which shall
8 be made public when submitted to the council for review. The council may, in its discretion, adopt,
9 modify, or reject the findings of fact and/or conclusions of law; provided, however, that any
10 modification or rejection of the proposed findings of fact or conclusions of law shall be in writing
11 and shall state the rationales therefor.

12 (b) The ~~director of the department of environmental management and the~~ coastal resources
13 management council shall promulgate such rules and regulations, not inconsistent with law, as to
14 assure uniformity of proceedings as applicable.

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

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

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RELATING TO WATERS AND NAVIGATION -- COASTAL RESOURCES MANAGEMENT
COUNCIL

1 This act would reduce the number of coastal resources management council hearing
2 officers, provide that the executive director of coastal resources serve as the hearing officers clerk,
3 and permit public testimony at administrative hearings of the coastal resources management
4 council.

5 This act would take effect upon passage.

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