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LC03009
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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2005

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A N A C T

RELATING TO SEPARATION OF POWERS

Introduced By: Representatives E Coderre, Gemma, Almeida, Crowley, and Gallison

Date Introduced: April 13, 2005

Referred To: House Separation of Powers

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 46-25-3, 46-25-5, 46-25-6, 46-25-7, 46-25-8 and 46-25-14 of the
2 General Laws in Chapter 46-25 entitled "Narragansett Bay Commission" are hereby amended to
3 read as follows:

4 **46-25-3. Definitions.** -- As used in this chapter, the following words and terms shall have
5 the following meanings unless the context shall indicate another or different meaning:

6 (1) "Administrative penalty" shall mean a monetary penalty not to exceed the civil
7 penalty specified in section 46-25-25.2.

8 (2) "Commission" is construed to mean the Narragansett Bay commission. Whenever in
9 any general or public law, reference is made to the "Narragansett Bay Water Quality Management
10 District Commission" the reference refers to and means the Narragansett Bay Commission.

11 (3) "Compliance schedule" means a schedule of remedial measures including an
12 enforceable sequence of actions, or operations leading to compliance with an effluent limitation
13 or any other limitation, prohibition, or standard.

14 (4) "Fund" shall be construed to mean the Narragansett Bay water quality management
15 district commission fund to be held by the commission.

16 (5) "Narragansett Bay water quality management district " shall mean and include:

17 (i) The city of Providence and those portions of the city of Cranston and portions of the
18 towns of Johnston, North Providence, and Lincoln formerly served by the city of Providence
19 sewage treatment system as well as the cities of East Providence, Pawtucket, and Central Falls,

1 the towns of Lincoln and Cumberland, and that portion of the town of Smithfield lying northeast
2 of the Douglas Pike, also called state route No. 7;

3 (ii) Any other portions of those municipalities as may by resolution request to be served
4 by the district and which are accepted by the commission as part of the district; and

5 (iii) Any other cities or towns or districts in Rhode Island or portions thereof as may,
6 from time to time, join the district pursuant to agreement with the commission, providing for the
7 acquisition of the sewage treatment facilities of such city, town, or district, or the merger and
8 consolidation of such district into the commission, or the management and operation of the
9 sewage treatment facilities of such city, town or district by the commission.

10 (6) "Notes" as used in sections 46-25-51 -- 46-25-67 shall be construed to mean the
11 notes, securities, or other obligations or evidences of indebtedness issued by the commission
12 pursuant to this chapter in anticipation of receiving user fees or state or federal funds, all of which
13 shall be issued under the name of and known as obligations of the Narragansett Bay water quality
14 management district.

15 (7) "Pollutant" shall be construed to mean the same as defined in section 46-12-1.

16 (8) "Pollution" shall be construed to mean the same as defined in section 46-12-1.

17 (9) "Person" shall include an individual, firm, partnership, association, and private or
18 municipal corporation and federal or state agencies.

19 (10) "Project" shall be construed to mean the Narragansett Bay water quality
20 management district project, and shall include the acquisition, ownership, design, operation,
21 construction, repair, rehabilitation, improvement, development, sale, lease or disposition of, or the
22 provision of financing for, any sewage treatment facility.

23 (11) "Revenue bonds and notes" as used in sections 46-25-58 -- 46-25-67, shall mean
24 and include the bonds, notes, securities, or other obligations or evidences of indebtedness issued
25 by the commission pursuant to sections 46-25-58 -- 46-25-67, all of which shall be issued under
26 the name of or known as obligations of the Narragansett Bay commission and shall be secured
27 solely by the revenues provided therein.

28 (12) "Sewage" shall be construed to mean the same as "pollutant" as defined in section
29 46-12-1.

30 (13) "Sewage treatment facilities" means any sewage treatment plant, structure,
31 combined sewer overflows, equipment, interceptors, mains, and pumping stations, or other
32 property, real, personal, or mixed, for the treatment, storage, collection, transporting, or disposal
33 of sewage, or any property or system to be used in whole or in part for any of the aforesaid
34 purposes, or any other property or system incidental to, or which has to do with, or the end

1 purpose of which is any of the foregoing; provided, however, that the term shall not include any
2 system of lateral sewers within a municipality.

3 (14) "Source" shall mean any building, structure, facility, or installation from which
4 there is or may be the discharge of pollutants.

5 (15) "Water supplier" shall mean any person, including a municipal water department or
6 agency, public water system, special water district, or private water company engaged in the
7 distribution of water for potable purposes.

8 (16) "Commercial interest" shall mean a for-profit entity such as a business or
9 development venture, or entities that represent the interests of for-profit entities, such as
10 commercial fishing organizations or trade groups.

11 (17) "Recreational interest" shall mean a not-for-profit entity such as a sailing
12 association, a kayaking organization, a recreational fishing association, or an advocacy group that
13 represents these interest.

14 **46-25-5. General powers.** -- The commission shall have the following powers, together
15 with all powers incidental thereto or necessary for the performance of those stated in this chapter:

16 (1) To sue and be sued, complain and defend, in its corporate name.

17 (2) To have a seal which may be altered at pleasure and to use the seal by causing it, or a
18 facsimile thereof, to be impressed or affixed or in any other manner reproduced.

19 (3) To purchase, take, receive, lease, or otherwise acquire, own, hold, improve, use, and
20 otherwise deal in and with, real or personal property, or any interest therein, wherever situated.

21 (4) To make and execute agreements of lease, construction contracts, operation
22 contracts, and all other contracts and instruments necessary or convenient in the exercise of the
23 powers and functions of the commission granted by this chapter.

24 (5) To make guarantees and incur or assume liabilities as the commission may deem
25 appropriate.

26 (6) To invest and reinvest its funds.

27 (7) To secure the cooperation and assistance of the United States, and any of its agencies,
28 and of agencies of this state and its municipalities in the work of the commission.

29 (8) To accept grants, donations, drafts, loans of funds, and contributions in money,
30 services, materials, or otherwise, from the United States or any of its agencies, from this state and
31 its agencies, or from any other source, and to use or expend those moneys, services, materials, or
32 other contributions in carrying out the purposes of this chapter.

33 (9) To make assessments and impose reasonable and just user charges, and to pay for
34 such expenses as may be required by law or as may be determined by the commission to be

1 necessary for the maintenance and operation of the project. In addition to the foregoing, the
2 assessments and user charges imposed pursuant to this chapter by the commission shall be set at a
3 rate sufficient to enable the commission to pay the debt service cost on not in excess of fourteen
4 million and fifty-nine thousand dollars (\$14,059,000) of general obligation bonds and on notes
5 issued pursuant to this chapter. Any user charge, fee, or rate shall be subject to the approval of the
6 public utilities commission.

7 (10) To establish a sewage pretreatment program, and to require as a condition, to the
8 grant or reissuance of any approval, license, or permit required under the program, that the person
9 applying for the approval, license, or permit, pay to the commission a reasonable fee based on the
10 cost of reviewing and acting upon the application and based on the costs of implementing the
11 program. In addition, where violations of the provisions of sections 46-25-25 -- 46-25-25.3, or of
12 any permit, rule, regulation, or order issued pursuant thereto have occurred, the violator shall
13 reimburse the commission for the actual costs of implementing and enforcing the terms of the
14 permit, rule, regulation, or order as a condition to the grant or reissuance of any approval, license,
15 or permit.

16 (11) To acquire or contract to acquire, from any person, the federal government or the
17 state, or any agency of either the federal government or state, by grant, purchase, lease, gift,
18 condemnation, or otherwise, or to obtain options for the acquisition of any property, real or
19 personal, improved or unimproved, and interests in land less than the fee thereof; and to own,
20 hold, clear, improve, develop, and rehabilitate, and to sell, assign, exchange, transfer, convey,
21 lease, mortgage, or otherwise dispose of or encumber the property for the purposes of carrying
22 out the provisions and intent of this chapter for such consideration as the commission shall
23 determine.

24 (12) To elect or appoint officers and agents of the commission, and to define their duties
25 and fix their compensation, including authority to employ attorneys, accountants, architectural,
26 and engineering consultants, and such other employees or agents as the commission shall deem
27 necessary in its judgment.

28 (13) To make and alter bylaws, not inconsistent with this chapter, for the administration
29 and regulation of the affairs of the commission, and the bylaws may contain provisions
30 indemnifying any person who is or was a director or a member of the commission, in the manner
31 and to the extent provided in section 7-1.1-4.1.

32 (14) To construct, acquire, repair, develop, own, operate, maintain, extend, improve,
33 rehabilitate, renovate, equip, and furnish a project and make provision for its management.

34 (15) To prepare or cause to be prepared plans, specifications, designs, and estimates of

1 costs of construction, reconstruction, rehabilitations, improvement, alteration, or repair of a
2 project, and to modify the same.

3 (16) To issue orders of general or specific applicability to carry out the purposes of the
4 project.

5 (17) To have and exercise all powers necessary or convenient to effect its purposes.

6 (18) To impose administrative penalties in accordance with the provisions of section 46-
7 25-25.4.

8 (19) To secure certain payments on its revenue bonds and notes, in whole or in part, by
9 insurance or by letters or lines of credit or other credit facilities.

10 (20) To enter into agreements, contracts, and other arrangements with the state and any
11 of its departments, agencies, boards or commissions relating to the execution or performance of
12 any function or purpose of the commission, including, but not limited to, investments, employee
13 compensation and employee benefits, and the state and its departments, agencies, boards and
14 commissions are hereby authorized to enter into such agreements, contracts and other
15 arrangements with the commission, and upon the request of the commission shall enter into such
16 agreements, contracts and other arrangements with the commission.

17 (21) To conduct a training course for newly appointed and qualified members within six
18 (6) months of their qualification. The course shall be developed by the executive director,
19 approved by the commission, and conducted by the executive director. The commission may
20 approve the use of any commission or staff members or other individuals to assist with training.
21 The training course shall include instruction in the following areas: the provisions of chapters 46-
22 25, 42-46, 36-14, and 38-2; and the commission's rules and regulations. Members who have not
23 completed the training course within six (6) months of their qualification may participate in
24 commission meetings, but may not vote until they have completed the course.

25 **46-25-6. Composition of commission -- Appointment of members. --** (a) The
26 commission shall consist of ~~twenty three (23)~~ twenty-one (21) members to be appointed in the
27 following manner: ~~ten (10)~~ nine (9) members shall be appointed by the governor with the advice
28 and consent of the senate from the public; one (1) of whom shall be a representative of a
29 commercial or development interest who resides in a municipality serviced by the commission;
30 one (1) of whom shall be a representative of a recreational interest or environmental advocacy
31 organization who resides in a municipality serviced by the commission; one (1) of whom shall
32 have an educational background in marine or environmental science; one (1) of whom shall be a
33 professional with expertise in financial planning and/or investment; one (1) of whom shall be a
34 registered professional engineer; and four (4) of whom shall be members of the general public

1 who reside in a municipality serviced by the commission. ~~as herein provided. Two (2)~~ Four (4)
2 members shall be appointed by the mayor of the city of Providence who shall reside in
3 Providence; one (1) member ~~each~~ shall be appointed by the mayor of the town of North
4 Providence; who shall reside in North Providence; one (1) member shall be appointed by the
5 mayor of the town of Johnston; who shall reside in Johnston; two (2) members shall be appointed
6 by the mayor of the city of Pawtucket; who shall reside in Pawtucket; one (1) member shall be
7 appointed by the mayor of the town of Cumberland; who shall reside in Cumberland; one (1)
8 member shall be appointed by the town administrator of the town of Lincoln; who shall reside in
9 Lincoln; one (1) member shall be appointed by the mayor of the city of Central Falls; who shall
10 reside in Central Falls; and one (1) member shall be appointed by the mayor of the city of East
11 Providence who shall reside in East Providence. ~~Two (2) members of the house of representatives~~
12 ~~to be appointed by the speaker, and two (2) members of the senate to be appointed by the~~
13 ~~president of the senate.~~ No person shall be eligible for appointment to the commission unless he
14 or she is a resident of this state.

15 (b) The appointments to the commission shall be made as follows:

16 (1) ~~The governor shall appoint two (2) members of the commission to serve until the first~~
17 ~~day of April, 1981, two (2) members to serve until the first day of April, 1982, four (4) members~~
18 ~~to serve until the first day of April, 1983, one member to serve until the first day of April 1993,~~
19 ~~one member to serve until the first day of April 1994, and all to serve until their successors are~~
20 ~~appointed and qualified.~~ In the month of March in each year ~~thereafter~~, the governor, with the
21 advice and consent of the senate, shall appoint successors to the members of the commission
22 whose term is expiring in that year, each member so appointed to hold office for a three (3) year
23 period commencing on the ~~first day of April in the year of appointment~~ day they are qualified and
24 continuing until the first day of April in the third year after his or her appointment and until his or
25 her successor is appointed and qualified. Any vacancy for a public member, which may occur in
26 the commission, shall be filled by the governor with the advice and consent of the senate for the
27 remainder of the unexpired term; in the same manner as the member's predecessor as prescribed
28 in subsection 46-25-6 (a). At least ten (10) days prior to any advice and consent hearing for a
29 gubernatorial appointment to the commission the proposed member shall submit to the president
30 of the senate a statement as prescribed in sections 36-14-16 and 36-14-17. Those members of the
31 commission as of the effective date of this section who were appointed to the commission by the
32 governor shall continue to serve the balance of their current terms. Upon the effective date of this
33 section, the first vacancy of the gubernatorial appointments shall be filled by the mayor of the city
34 of Providence as prescribed in subsection 46-25-6 (b) (2). Thereafter, the appointments shall be

1 made by the governor as prescribed in subsection 46-25-6 (a).

2 (2) ~~The mayor of the city of Providence shall appoint one member of the commission to~~
3 ~~serve until the first day of April, 1982, and one member to serve until the first day of April, 1983,~~
4 ~~and all to serve until their successors are appointed and qualified. The mayor of the town of North~~
5 ~~Providence and the mayor of the town of Johnston each shall appoint a member to serve until the~~
6 ~~first day of April, 1981, each member so appointed shall serve until his or her successor is~~
7 ~~appointed and qualified. The Mayor of the city of Pawtucket shall appoint one member of the~~
8 ~~commission to serve until the first day of April, 1993, and such member so appointed shall serve~~
9 ~~until his or her successor is appointed and qualified. The town administrator of the town of~~
10 ~~Lincoln and the mayor of the city of Central Falls shall each appoint one member of the~~
11 ~~commission to serve until the first day of April, 1994, and each member so appointed shall serve~~
12 ~~until his or her successor is appointed and qualified. The mayors of the town of Cumberland and~~
13 ~~the city of East Providence shall each appoint one member of the commission to serve until the~~
14 ~~first day of April, 1995, and each member so appointed shall serve until his or her successor is~~
15 ~~appointed and qualified.~~ In the month of March in each year ~~thereafter~~, the respective mayors and
16 town administrator shall appoint a successor to the member of the commission whose term is
17 expiring in that year, each member so appointed to hold office for a three (3) year period,
18 commencing on the ~~first day of April in the year of appointment~~ day they are qualified and
19 continuing until the first day of April in the third year after his or her appointment and until his or
20 her successor is appointed and qualified. ~~The legislative members so appointed by the speaker of~~
21 ~~the house of representatives and the president of the senate shall hold office for a three (3) year~~
22 ~~period and until their successor is appointed and qualified.~~ Any vacancy which may occur in the
23 commission shall be filled by the appointing authority who originally appointed the member, ~~and~~
24 ~~the appointment shall be~~ for the remainder of the unexpired term in the same manner as the
25 member's predecessor as prescribed in subsection 46-25-6 (a). Those members of the commission
26 as of the effective date of this section who were appointed to the commission by the mayors of
27 Providence, North Providence, Johnston, Pawtucket, Cumberland, Central Falls and East
28 Providence and the town administrator of Lincoln shall continue to serve the balance of their
29 current terms. Upon the effective date of this section, the mayor of the city of Providence shall
30 appoint one (1) new member to the commission who shall reside in Providence, and the mayor of
31 Pawtucket shall appoint one (1) new member of the commission who shall reside in Pawtucket.

32 (3) Members of the commission shall be eligible for reappointment.

33 (4) Members of the commission shall be subject to removal by the appointing authority
34 for cause only, and removal solely for partisan or personal reasons unrelated to capacity or fitness

1 for the office shall be unlawful. No removal shall be made for any cause except after ten (10)
2 days notice in writing of the specific charges, with the opportunity for the member to be present
3 in person and with counsel at a public hearing before the appointing authority or his or her
4 designee, to introduce witnesses and documentary evidence in his or her own defense, and to
5 confront and cross-examine adversary witnesses. The appointing authority shall file in the office
6 of the secretary of state a complete statement of charges made against the member and a complete
7 record of the proceedings. Any public member who has attended fewer than one-half (1/2) of the
8 meetings of the commission during any fiscal year shall be subject to removal by the appointing
9 authority.

10 **46-25-7. Officers of the commission -- Quorum and vote required.** -- ~~Forthwith, after~~
11 ~~May 16, 1980, and annually in the month of April thereafter,~~ Annually in the month of April, the
12 commission shall elect one of its members as chairperson, and one of its members as vice
13 chairperson. The commission may elect from among its members such other officers as they
14 deem necessary. ~~Twelve (12)~~ Eleven (11) members of the commission shall constitute a quorum.
15 and the vote of eleven (11) members shall be necessary and shall suffice for any action taken by
16 the commission. A majority vote of those present shall be required for action. No vacancy in the
17 membership of the commission shall impair the right of a quorum to exercise all the rights and
18 perform all of the duties of the commission.

19 **46-25-8. Compensation -- Personnel.** -- (a) The members of the commission ~~are paid~~
20 ~~fifty dollars (\$50.00) for attendance at a full commission meeting, up to a maximum of three~~
21 ~~thousand dollars (\$3,000) per year as compensation, and shall be reimbursed for actual expenses~~
22 ~~incurred in carrying out their duties under this chapter, except that full time state and municipal~~
23 ~~employees shall not be paid for meetings held wholly during their normal working hours.~~ shall
24 serve without compensation, but may be reimbursed for actual expenses incurred in carrying out
25 their duties under this chapter.

26 (b) Notwithstanding the provisions of any other law, no officer or employee of the state
27 shall be deemed to have forfeited or shall forfeit his or her office or employment by reason of his
28 or her acceptance of membership on the commission or his or her service thereto.

29 (c) The commissioners shall employ an executive director who shall also be the secretary
30 and who shall administer, manage, and direct the affairs and business of the commission, subject
31 to the policies, control, and direction of the commissioners. The commissioners may employ
32 technical experts and other officers, agents, and attorneys and fix their qualifications, duties, and
33 compensation. Employees of the commission shall not, by reason of their employment, be
34 employees of the state for any purpose, any provision of the general laws to the contrary

1 notwithstanding, including, without limiting the generality of the foregoing, chapters 29, 39, and
2 42 of title 28 and chapters 4, 8, 9, and 10 of title 36. Those employees of the commission who
3 were employed prior to June 30, 1999, shall continue to be covered by sections 36-4-59, 36-5-7
4 and 36-5-8. The employees are not entitled to the provisions of sections 36-4-59, 36-5-7 and 36-
5 5-8 while employed by the commission. The employees are only entitled to the provisions of
6 these statutes in the event that any such employee returns to employment in the classified service
7 in a department within the executive branch. The commissioners may employ other employees,
8 permanent and temporary. The commissioners may delegate to one or more of its agents or
9 employees any administrative duties that they may deem proper.

10 (d) The secretary shall keep a record of the proceedings of the commission and shall be
11 custodian of all books, documents, and papers filed with the commission and of its minute book
12 and seal. He or she shall have authority to cause to be made copies of all minutes and other
13 records and documents of the commission, and to give certificates under the seal of the
14 commission to the effect that the copies are true copies and all persons dealing with the
15 commission may rely upon the certificates.

16 (e) The department of administration may furnish the commission with suitable offices
17 and telephone service in the state house, state office building, or some other convenient location,
18 for the transaction of its business.

19 (f) The commissioners of the commission shall, ~~at regular intervals conduct business~~
20 ~~meetings~~ meet at the call of the chair at least six (6) times per year for the purpose of carrying out
21 its general business. The meetings shall be subject to the provisions of chapter 46 of title 42
22 entitled "open meetings".

23 **46-25-14. Annual report.** ~~-- In the month of January, the commission shall make an~~
24 ~~annual report to the governor and to the general assembly of its activities for the preceding fiscal~~
25 ~~year. Each report shall set forth a complete statement covering its operations during the year.~~
26 Within ninety (90) days after the end of each fiscal year, the commission shall submit an annual
27 report to the governor, the speaker of the house of representatives, the president of the senate, and
28 the secretary of state of its activities during that fiscal year. The report shall provide: a summary
29 of the commission's meetings including when the commission and its committees met, subjects
30 addressed, and decisions rendered, a summary of the commission's actions including a listing of
31 sewer connections requested, required or denied, assessments made and user fees imposed, rules
32 and regulations promulgated, approvals, licenses, and permits issued under commission's sewage
33 pretreatment program, permits issued or denied for the discharge of pollutants into the
34 commission's facilities, properties and water rights acquired, projects initiated or managed,

1 violations assessed and penalties imposed, inspections and monitoring activities conducted,
2 hearings held, agreements of lease and contracts executed, bonds and notes issued or secured,
3 studies conducted, grants or loans applied or contracted for; and orders issued to water suppliers
4 to terminate water supplies; a synopsis of the hearings, complaints, suspensions, or other legal
5 matters related to the authority of the commission; a consolidated financial statement of all funds
6 received and expended by the commission including the source of the funds, liabilities incurred or
7 assumed, funds invested, loans of funds or advances received from the general fund of the state,
8 and capital reserve funds created and paid into; a summary of any training courses held pursuant
9 to subsection 46-25-5 (21); a summary of how the commission's annual work elements adhere to
10 provisions of federal legislation, and are consistent with and supportive of the systems-level plan
11 developed and implemented by the Rhode Island Bays, Rivers, and Watersheds Coordination
12 Team; a summary of performance during the previous fiscal year including accomplishments,
13 shortcomings and remedies; a listing of the staff and/or consultants employed by the commission;
14 a briefing on anticipated activities in the upcoming fiscal year; and a listing of findings and
15 recommendations derived from commission activities. The report shall be posted electronically as
16 prescribed in section 42-20-8.2.

17 SECTION 2. Severability. If any provision of this act or the application thereof to any
18 person or circumstances is held invalid, such invalidity shall not affect other provisions or
19 applications of the act, which can be given effect without the invalid provision or application, and
20 to this end the provisions of this act are declared to be severable.

21 SECTION 3. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO SEPARATION OF POWERS

- 1 This act would remove legislators and legislative appointees from the Narragansett Bay
- 2 Commission in accord with the recent amendments to the state constitution.
- 3 This act would take effect upon passage.

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