

# 2012 -- H 7801 SUBSTITUTE A

=====  
LC01749/SUB A  
=====

## STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2012

—————  
A N A C T

RELATING TO WATERS AND NAVIGATION - OBSTRUCTIONS TO NAVIGATION

Introduced By: Representatives Malik, Gallison, and Morrison

Date Introduced: February 28, 2012

Referred To: House Environment and Natural Resources

It is enacted by the General Assembly as follows:

1           SECTION 1. Chapter 46-6 of the General Laws entitled "Obstructions to Navigation" is  
2 hereby amended by adding thereto the following sections:

3           **46-6-8.1. Definitions. – As used in this chapter:**

4           (1) "Abandoned vessel" means a vessel that has been left, moored, or anchored in the  
5 same area without the express consent, or contrary to the rules of, the owner, manager, or lessee  
6 of the submerged lands or waters below or on which the vessel is located for more than forty-five  
7 (45) consecutive days or for more than a total of ninety (90) days in any three hundred sixty-five  
8 (365) day period, and the vessel's owner is: (i) Not known or cannot be located; or (ii) Known  
9 and located but is unwilling to take control of the vessel. Examples of abandoned vessels shall,  
10 include, but not be limited to, the following:

11           (A) Any vessel that is left unattended or has remained illegally on public property,  
12 including docks, boat launching ramps, or moorings for more than forty-five (45) days.

13           (B) Any vessel that has been found adrift or unattended in or upon the waters or  
14 submerged lands of the state of Rhode Island, and is found in a condition of disrepair as to  
15 constitute a hazard or obstruction to the use of the waters and submerged lands of the state or  
16 presents a potential health or environmental hazard.

17           (2) "Authorized public entity" means the department of environmental management or  
18 any municipality with jurisdiction or management authority over the harbor areas where an  
19 abandoned or derelict vessel or other obstruction is located.

1           (3) “Department” means the department of environmental management.

2           (4) “Derelict vessel” means a vessel whose owner is known and can be located, and who  
3 is able to exert control of a vessel that:

4           (i) Has been moored, anchored, or otherwise left in the waters or submerged lands of the  
5 state or on public property contrary to the rules adopted by an authorized public entity;

6           (ii) Is sunk or in danger of sinking;

7           (iii) Is obstructing a waterway; and/or

8           (iv) Is endangering life or property.

9           (5) “Director” means the director of the department of environmental management.

10          (6) “Mean high water” means a line of contour representing the eighteen and six-tenths  
11 (18.6) year average as determined by the metonic cycle and/or its equivalent as evidenced by the  
12 records, tidal datum, and methodology of the United States Coastal Geodetic Survey within the  
13 National Oceanic and Atmospheric Administration.

14          (7) “Obstruction” means any unlawful or unauthorized structure or thing that is deposited  
15 or suffered to be or remain in the tidal waters or upon the tidal lands of the state, and in the  
16 judgment of the director, is, or is liable to cause or become an obstruction to the safe and  
17 convenient use of the waters and submerged lands of the state for navigation and other lawful  
18 purposes.

19          (8) “Owner” means a person, other than a lienholder, having a property interest in or title  
20 to a vessel or other obstruction. The term includes a person entitled to use or have possession of a  
21 vessel or other obstruction subject to an interest in another person, reserved, or created by  
22 agreement and securing payment or performance of an obligation, but it does not include a lessee  
23 under a lease not intended as security.

24          (9) “Tidal lands” means those lands that are below the mean high water.

25          (10) “Tidal waters” means all waters seaward of mean high water.

26          (11) “Vessel” means every description of watercraft, other than a seaplane on the water,  
27 used or capable of being used as a means of transportation on water.

28          (12) “Waters and submerged lands of the state” means all tidal waters and tidal lands  
29 within the territorial limits of the state, all inland waters of the state, and all publicly owned  
30 submerged lands lying beneath the inland waters of the state.

31          **46-6-10.1. Use or disposal of vessel or other obstruction.** – (a) After taking possession  
32 of a vessel or other obstruction, pursuant to the terms and conditions of sections 46-6-9 and 46-9-  
33 10, the authorized public entity may use or dispose of the vessel or other obstruction in any  
34 appropriate and environmentally sound manner without further notice to any owners, but must

1 give preference to uses that derive some monetary benefit from the vessel or other obstruction,  
2 either in whole or in scrap. If no value can be derived from the vessel or other obstruction, the  
3 authorized public entity must give preference to the least costly, environmentally sound,  
4 reasonable disposal option.

5 (b) If the authorized public entity chooses to offer the vessel or other obstruction for sale  
6 at public auction, either a minimum bid may be set or a letter of credit may be required, or both,  
7 to discourage future re-abandonment of the vessel or other obstruction.

8 (c) Proceeds derived from the sale of the vessel or other obstruction must first be applied  
9 to any administrative costs that are incurred by the authorized public entity during the notification  
10 procedures set forth in section 46-6-9, removal and disposal costs, and costs associated with  
11 environmental damages directly or indirectly caused by the vessel or other obstruction. If the  
12 proceeds derived from the sale of the vessel or other obstruction exceed all such costs, the  
13 remaining moneys must be applied to satisfying any liens registered against the vessel or other  
14 obstruction.

15 (d) Any value derived from the sale of a vessel greater than all liens and costs incurred  
16 shall revert to the derelict and abandoned vessel and obstruction removal account established in  
17 section 46-6-10.3.

18 **46-6-10.2. Derelict and abandoned vessel and obstruction removal commission. – (a)**

19 There is hereby created a commission known as the derelict and abandoned vessel and  
20 obstruction removal commission which shall consist of five (5) members as follows:

21 (1) One member who shall be engaged in the marine trades industry, to be appointed by  
22 the governor with advice and consent of the senate;

23 (2) One member who shall represent a private, nonprofit environmental advocacy  
24 organization whose purposes include protecting and preserving Narragansett Bay, to be appointed  
25 by the governor with advice and consent of the senate;

26 (3) One member who shall be a municipal harbormaster, to be appointed by the governor  
27 with advice and consent of the senate;

28 (4) The director of the department of environmental management or his or her designee;  
29 and

30 (5) The executive director of the coastal resources management council or his or her  
31 designee.

32 (b) The chairperson shall be elected by the members of the commission.

33 (c) The members appointed by the governor shall serve three (3) year terms, and be  
34 eligible for re-appointment.

1 (d) The purpose of the commission shall be to prioritize the disbursement of funds from  
2 the derelict and abandoned vessel and obstruction removal account established in section 46-6-  
3 10.3.

4 (e) The commission shall be advisory to the director and shall provide recommendations  
5 to the director for fund disbursement.

6 (f) The commission shall develop criteria, in the form of guidelines, to prioritize removal  
7 projects undertaken pursuant to this chapter, and in accordance with the use of the derelict and  
8 abandoned vessel and obstruction removal account established in section 46-6-10.3. The  
9 guidelines shall also include guidance to the authorized public entities as to what removal  
10 activities and associated costs are reasonable and eligible for coverage by the fund. The director  
11 shall review and approve, approve with conditions, or reject these guidelines within thirty (30)  
12 days of receipt. The commission may seek to revise the guidelines at any time, by submitting  
13 such revisions to the director for review and approval. The guidelines shall be made publicly  
14 available.

15 **46-6-10.3. Derelict and abandoned vessel and obstruction removal account. --** (a) All  
16 fees assessed pursuant to section 46-6-10.4 shall be deposited into a restricted receipt account,  
17 hereby created and known as the derelict and abandoned vessel and obstruction removal account.  
18 The account is also authorized to receive fund transfers and appropriations from the general fund,  
19 and from any moneys collected pursuant to section 46-6-12. Funds from the account may only be  
20 used to cover the costs of removing, disposing, and/or selling derelict and abandoned vessels and  
21 other obstructions, including any associated administrative or environmental remediation costs, in  
22 accordance with the provisions of this chapter.

23 (b) Priority for use of funds from the account is for (1) The removal of derelict and  
24 abandoned vessels that are in danger of sinking or have sunk, are breaking up or have broken up,  
25 pose a hazard to navigation, and/or pose threats to the environment; and (2) The removal of  
26 obstructions that pose a hazard to navigation, and/or pose threats to the environment.

27 (c) The department shall keep all authorized public entities apprised of the balance of the  
28 derelict and abandoned vessel and obstruction removal account and the funds available for  
29 disbursement.

30 **46-6-10.4. Derelict and abandoned vessel and obstruction removal fee. –** There is  
31 hereby established a derelict and abandoned vessel and obstruction removal fee which shall be in  
32 addition to the vessel registration fee assessed pursuant to subdivision 46-22-4(a)(1). The fee  
33 shall be assessed biennially at the time vessel registration fees are assessed by the department  
34 pursuant to subdivision 46-22-4(a)(1). All derelict and abandoned vessel and obstruction removal

1 fees shall be deposited in the derelict and abandoned vessel and obstruction removal account  
2 established pursuant to section 46-6-10.3. The fees shall be assessed as follows:

<u>Overall Vessel Length (Ft)</u>	<u>User Fee</u>
<u>1-15 feet</u>	<u>\$2.00</u>
<u>16-20 feet</u>	<u>\$2.00</u>
<u>21-25 feet</u>	<u>\$6.00</u>
<u>26-30 feet</u>	<u>\$8.00</u>
<u>31-35 feet</u>	<u>\$12.00</u>
<u>36-40 feet</u>	<u>\$14.00</u>
<u>41-45 feet</u>	<u>\$16.00</u>
<u>46-50 feet</u>	<u>\$18.00</u>
<u>51 feet and above</u>	<u>\$20.00</u>

13 Pursuant to paragraph 46-22-4(a)(1)(iii), vessels over thirty feet (30') may, upon request,  
14 pay the derelict and abandoned vessel and obstruction removal fee, along with the registration fee  
15 annually at the rate of one-half (1/2) the biennial fee for a vessel of the same length.

16 **46-6-17. Severability.** – The provisions of this chapter shall be severable and, if any of  
17 the provisions shall be held invalid, the decision of the court respecting that provision or  
18 provisions shall not affect the validity of any other provision which can be given effect without  
19 that invalid provision.

20 SECTION 2. Sections 46-6-10, 46-6-11 and 46-6-12 of the General Laws in Chapter 46-6  
21 entitled "Obstructions to Navigation" are hereby amended to read as follows:

22 **46-6-10. Removal of obstruction by director -- Payment of cost.** – (a) If the vessel or  
23 other obstruction is: (1) ~~not~~ Not removed at or within the time specified in the notice, and in a  
24 manner and to a place satisfactory to the director, or (2) If the vessel or other obstruction is in  
25 immediate danger of sinking or has sunk, is breaking up or has broken up, or is posing a hazard to  
26 navigation; or (3) If the vessel or other obstruction poses an imminent threat to human health or  
27 safety, including a threat of environmental contamination; and (4) ~~if~~ If no owner or other person  
28 is known to the director upon whom the notice can be served, the director or other authorized  
29 public entity may proceed to remove the vessel or other obstruction, or to complete the removal  
30 thereof, or to cause the removal to be done, in such manner and to such place as the director or  
31 other authorized public entity shall deem best; and the necessary cost and expense of the  
32 removal, if not paid by some owner or other person liable therefor, shall, when certified by the  
33 director, be paid out of the derelict and abandoned vessel and obstruction removal account or out  
34 of the treasury of the state out of any money appropriated therefor.

1           **(b) Before taking temporary possession of any vessel or other obstruction, the authorized**  
2 **public entity must make reasonable attempts to consult with the department of the United States**  
3 **Coast Guard to ensure that other remedies are not available. The basis for taking temporary**  
4 **possession of the vessel or other obstruction must be set out in writing by the authorized public**  
5 **entity within seven (7) days of taking action and be submitted to the owner, if known, as soon**  
6 **thereafter as reasonable. If the authorized public entity has not already provided the required**  
7 **notice, immediately after taking possession of the vessel or other obstruction, the authorized**  
8 **public entity must initiate the notice provisions in subsection 46-6-9(a). The authorized public**  
9 **entity must complete the notice requirements of subsection 46-6-9(a) before using or disposing of**  
10 **the vessel or other obstruction as authorized in section 46-6-10.1.**

11           **46-6-11. Liability for cost of removing obstruction -- Action for recovery. --** The  
12 owner of any vessel or of an interest in any vessel willfully or maliciously wrecked, sunken, or  
13 abandoned and removed as provided in section 46-6-10, whether owning, at the time the vessel  
14 first became an obstruction, or at any subsequent time before the removal is completed, and all  
15 persons having or exercising any control over the vessel or any part thereof, and, in the case of  
16 any other obstruction so removed, the person or persons originally building, depositing, or  
17 causing the obstruction, or at the time of the removal, or at any time prior thereto, owning,  
18 maintaining, or using the obstruction in whole or in part, shall be liable to pay the cost and  
19 expenses of the removal, or to repay the cost when paid out of the **derelict and abandoned vessel**  
20 **and obstruction removal account or** treasury as aforesaid; and the cost may be recovered in a civil  
21 action brought by the director in the name of the state against the owners or other persons, or  
22 against any one or more of them. The attorney general shall conduct and commence the suits. All  
23 moneys so repaid or recovered shall be paid into the **derelict and abandoned vessel and**  
24 **obstruction removal account or** treasury of the state. Any person who pays on a judgment or  
25 otherwise more than his or her proportional part of the costs and expenses aforesaid, shall have a  
26 claim for contribution against all other parties liable therefor according to their respective  
27 interests.

28           **46-6-12. Sale of object removed to pay cost of removal. --** If the cost and expenses of  
29 removing a vessel or other obstruction as aforesaid are not paid or repaid by some owner or other  
30 person liable therefor within ten (10) days after the removal is completed, the director of the  
31 department of environmental management may sell the vessel or other obstruction, or the  
32 materials and appurtenances thereof, at public or private sale, and the net proceeds of the sale  
33 shall be paid into the **derelict and abandoned vessel and obstruction removal account or** treasury  
34 of the state and deducted from the amount to be repaid or recovered as provided in section 46-6-

1 11.

2 SECTION 3. This act shall take effect upon passage; provided, however, that section 46-  
3 6-10.4 of this act shall apply to all boat registrations, including renewals, effective March 1, 2013.

=====  
LC01749/SUB A  
=====

EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF

A N A C T

RELATING TO WATERS AND NAVIGATION - OBSTRUCTIONS TO NAVIGATION

\*\*\*

1           This act would allow the authorized public entity to use or dispose of derelict or  
2 abandoned vessels or other obstructions without further notice to any owners. Preference is to a  
3 use which would derive some monetary benefit from the vessel.

4           This act would take effect upon passage; provided, however, that section 46-6-10.4  
5 would apply to all boat registrations, including renewals, effective March 1, 2013.

=====  
LC01749/SUB A  
=====