It is enacted by the General Assembly as follows:

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 General Laws in Chapter 46-23 entitled “Coastal Resources Management Council” are hereby amended to read as follows:

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

(b) All contested cases, contested enforcement proceedings, and contested administrative fines except federal consistency decisions pursuant to this chapter shall not be heard or issued without a hearing at which the public shall have full access to observe and shall be allowed a reasonable opportunity to testify and/or offer written testimony so long as the testimony is related to the proceeding. All federal consistency decisions shall be made by the executive director or the
46-23-20.1  Hearing officers -- Appointment -- Compensation -- Subcommittee

Hearing officer -- Appointment -- Compensation -- Subcommittee.

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

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

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

(d) Compensation for the hearing officers shall be determined by the unclassified pay board.

(e) Whenever in case of a contested federal consistency decision the chairperson of the coastal resources management council or, in the absence of the chairperson, the commissioner of coastal resources makes a finding that the hearing officers are otherwise engaged and unable to hear a matter in a timely fashion, he or she the executive director may appoint a subcommittee which will act as hearing officers in any contested case coming before the council officer. The subcommittee shall consist of at least one member: provided, however, that in all contested federal consistency cases an additional member shall be a resident of the coastal community affected, if a individual community is specifically impacted. The city or town council of each coastal community shall, at the beginning of its term of office, appoint a resident of that city or town to serve as an alternate member of the aforesaid subcommittee for federal consistency decisions should there be no existing member of the coastal resources management council from that city or town available to serve on the subcommittee. Any member of the subcommittee actively engaged in hearing a case shall continue to hear the case, even though his or her term may have expired, until the case is concluded and a vote taken thereon. Hearings before subcommittees shall be subject to all rules of practice and procedure as govern hearings before the hearing officers.
46-23-20.2. Clerk.

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

46-23-20.3. Prehearing procedure.

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

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

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

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

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

SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO WATERS AND NAVIGATION -- COASTAL RESOURCES MANAGEMENT COUNCIL

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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.
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This act would take effect upon passage.

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