

**2014 -- S 2792 SUBSTITUTE A AS AMENDED**

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LC005209/SUB A/2  
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**STATE OF RHODE ISLAND**

**IN GENERAL ASSEMBLY**

**JANUARY SESSION, A.D. 2014**

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A N A C T

RELATING TO WATERS AND NAVIGATION - THE COASTAL RESOURCES  
MANAGEMENT COUNCIL - FISHERIES ADMINISTRATIVE FUND FOR RENEWABLE  
ENERGY PROJECTS

Introduced By: Senator V. Susan Sosnowski

Date Introduced: March 25, 2014

Referred To: Senate Environment & Agriculture

(by request)

It is enacted by the General Assembly as follows:

1           SECTION 1. Section 46-23-1 of the General Laws in Chapter 46-23 entitled "Coastal  
2 Resources Management Council" is hereby amended to read as follows:

3           **46-23-1. ~~Legislative findings~~ Legislative findings, duties and responsibilities.** -- (a)

4           (1) Under article 1, section 17 of the Rhode Island Constitution, the people shall continue to enjoy  
5 and freely exercise all the rights of fishery, and the privileges of the shore, to which they have  
6 been heretofore entitled under the charter and usages of this state, including, but not limited to,  
7 fishing from the shore, the gathering of seaweed, leaving the shore to swim in the sea and passage  
8 along the shore; and they shall be secure in their rights to use and enjoyment of the natural  
9 resources of the state with due regard for the preservation of their values; and it is the duty of the  
10 general assembly to provide for the conservation of the air, land, water, plant, animal, mineral and  
11 other natural resources of the state, and to adopt all means necessary and proper by law to protect  
12 the natural environment of the people of the state by providing adequate resource planning for the  
13 control and regulation of the use of the natural resources of the state and for the preservation,  
14 regeneration, and restoration of the natural environment of the state.

15           (2) The general assembly recognizes and declares that the coastal resources of Rhode  
16 Island, a rich variety of natural, commercial, industrial, recreational, and aesthetic assets, are of  
17 immediate and potential value to the present and future development of this state; that unplanned  
18 or poorly planned development of this basic natural environment has already damaged or

1 destroyed, or has the potential of damaging or destroying, the state's coastal resources, and has  
2 restricted the most efficient and beneficial utilization of these resources; that it shall be the policy  
3 of this state to preserve, protect, develop, and, where possible, restore the coastal resources of the  
4 state for this and succeeding generations through comprehensive and coordinated long range  
5 planning and management designed to produce the maximum benefit for society from these  
6 coastal resources; and that preservation and restoration of ecological systems shall be the primary  
7 guiding principle upon which environmental alteration of coastal resources will be measured,  
8 judged, and regulated.

9 (b) (1) That effective implementation of these policies is essential to the social and  
10 economic well-being of the people of Rhode Island because the sea and its adjacent lands are  
11 major sources of food and public recreation, because these resources are used by and for industry,  
12 transportation, waste disposal, and other purposes, and because the demands made on these  
13 resources are increasing in number, magnitude, and complexity; and that these policies are  
14 necessary to protect the public health, safety, and general welfare. Pursuant to 16 U.S.C. section  
15 1452 ("The Coastal Zone Management Act"), the general assembly hereby directs the council  
16 (referred to as "CRMC") to exercise effectively its responsibilities in the coastal zone through the  
17 development and implementation of management programs to achieve wise use of the land and  
18 water resources of the coastal zone.

19 (2) Furthermore, that implementation of these policies is necessary in order to secure the  
20 rights of the people of Rhode Island to the use and enjoyment of the natural resources of the state  
21 with due regard for the preservation of their values, and in order to allow the general assembly to  
22 fulfill its duty to provide for the conservation of the air, land, water, plant, animal, mineral, and  
23 other natural resources of the state, and to adopt all means necessary and proper by law to protect  
24 the natural environment of the people of the state by providing adequate resource planning for the  
25 control and regulation of the use of the natural resources of the state and for the preservation,  
26 regeneration, and restoration of the natural environment of the state.

27 (c) That these policies can best be achieved through the creation of a coastal resources  
28 management council as the principal mechanism for management of the state's coastal resources.

29 (d) The general assembly recognizes and declares that maintenance dredging is required  
30 to remove natural silt accumulations; Rhode Island has not had a general maintenance dredging  
31 policy and programs for ports, port facilities, channels, harbors, public and private marinas and  
32 boating facilities, recreational facilities and habitat areas; other major coastal states have  
33 maintenance dredging policies and in-water maintenance dredge disposal sites; as a result of the  
34 lack of a general maintenance dredging policy and program and as a result there has been:

1 (1) A decrease in the depth of the Providence Channel from forty-four (44) feet in 1971  
2 to twenty-four (24) feet in 1996;

3 (2) Navigational restrictions on ocean going vessels through the state's waterways and  
4 channels; and

5 (3) A decrease in the number of available slips and moorings at marinas throughout the  
6 state; and the lack of a maintenance dredging policy and programs have significant adverse  
7 environmental and economic effects on the state and therefore it is in the best interest of the state,  
8 the cities and towns of the state, and the citizens thereof for the state to have a general  
9 maintenance dredging policy and programs to resolve issues related to dredge maintenance and  
10 disposal and avoid future significant direct and indirect adverse impact on the environment and  
11 economy of the state.

12 (e) The coastal resources management council is hereby designated as the lead state  
13 agency for purposes of dredging in tidal waters and as such shall have the following duties and  
14 responsibilities:

15 (1) To coordinate the interest of the state with regard to dredging;

16 (2) To formulate and adopt a state policy with regard to dredging which integrates those  
17 interests;

18 (3) To cooperate with, negotiate, and to enter into agreements on behalf of the state with  
19 the federal government and with other public bodies and private parties with regard to dredging;

20 (4) To act as the initial and primary point of contact for all applications to the state for  
21 dredging projects in tidal waters;

22 (5) To develop, prepare, adopt pursuant to section 46-23-11, implement, and maintain a  
23 comprehensive plan for dredge material management; and

24 (6) To cooperate and coordinate with the departments of environmental management,  
25 transportation, administration, and health, and the economic development corporation in the  
26 conduct of these duties and responsibilities.

27 (f) (1) The legislature recognizes that under Article I, section 17, the submerged lands of  
28 the state are impressed with a public trust and that the state is responsible for the protection of the  
29 public's interest in these lands. The state maintains title in fee to all soil within its boundaries that  
30 lies below the high water mark, and it holds that land in trust for the use of the public. In  
31 benefiting the public, the state preserves certain public rights which include, but are not limited  
32 to, fishery, commerce, and navigation in these waters and the submerged lands that they cover.

33 (2) Since its establishment in 1971, the CRMC has had the authority to manage and plan  
34 for the preservation of the coastal resources of the state including, but not limited to, submerged

1 lands. The legislature hereby declares that, in light of the unique size, scope, and overall potential  
2 impact upon the environment of large scale filling projects involving twenty-five (25) acres or  
3 more, any lease of tidal lands, or any license to use those lands, is subject to approval,  
4 disapproval, or conditional approval by the direct enactment of the general assembly by  
5 legislative action. The CRMC shall review all requests for leases, licenses to use the land, and  
6 other authority to use the land made by any applicant prior to presentation of the request to the  
7 general assembly, and the CRMC shall make recommendations on the request to the general  
8 assembly. With the exception of any and all projects to fill land of twenty-five (25) acres or more,  
9 the general assembly hereby recognizes and declares that the CRMC is delegated the sole and  
10 exclusive authority for the leasing of submerged and filled lands and giving licenses for the use of  
11 that land. Accordingly, the CRMC will develop, coordinate, and adopt a system for the leasing of  
12 submerged and filled lands, and licenses for the use of that land, and will ensure that all leases  
13 and licenses are consistent with the public trust. Pursuant thereto, the CRMC shall impose a  
14 maximum fee of eighty thousand dollars (\$80,000) per annum for any transatlantic cable that  
15 makes landfall in Rhode Island. All such fees collected shall be deposited into the Bays, Rivers  
16 and Watersheds Fund, established pursuant to section 46-31-12.1, and shall be disbursed  
17 according to the purposes of that fund. The CRMC shall impose a lease fee of one hundred fifty  
18 thousand dollars (\$150,000) for each year of commercial operation for any renewable energy  
19 projects with a project cost exceeding five million dollars (\$5,000,000); provided, however, that  
20 in lieu of such leasing fee the developer of a renewable energy project may elect to support the  
21 Rhode Island fishing community as determined by the fisherman's advisory board established  
22 pursuant to the Rhode Island ocean special area management plan. Nothing contained in this  
23 subsection negates, repeals, or alters the provisions, processes, and requirements for the leasing of  
24 submerged land for the conduct of aquaculture as set out under chapter 10 of title 20. Therefore,  
25 nothing in this chapter shall be construed to limit or impair the authority of the state, or any duly  
26 established agency of the state, to regulate filling or dredging affecting tidal lands owned by the  
27 state or any other entity, and nothing in this chapter shall be construed to limit or impair the  
28 obligation of the applicant to obtain all applicable regulatory approvals. Specifically, and without  
29 limiting the foregoing, nothing in this subsection negates, repeals, or alters the provisions,  
30 processes, and requirements for water quality certification contained in chapter 12 of this title.

31 (3) Definitions.

32 (i) "Filled land" means portions of tidal lands which have been rendered by the acts of  
33 man to be no longer subject to tidal action or beneath tidal waters.

34 (ii) "Tidal Lands" means those lands that are below the mean high water.

1           (iii) "Mean high water" means a line of contour representing the 18.6 year average as  
2 determined by the metonic cycle and/or its equivalent as evidenced by the records, tidal datum,  
3 and methodology of the United States Coastal Geodetic Survey within the National Oceanic and  
4 Atmospheric Administration.

5           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 - THE COASTAL RESOURCES  
MANAGEMENT COUNCIL - FISHERIES ADMINISTRATIVE FUND FOR RENEWABLE  
ENERGY PROJECTS

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1           This act would impose a lease fee of \$150,000 per year for any renewable energy project  
2           with a cost exceeding five million dollars, but in lieu of that leasing fee the developer may enter  
3           into a private agreement to fund a fisheries liaison position selected by the fisherman's advisory  
4           board.

5           This act would take effect upon passage.

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