

**2022 -- S 2843 SUBSTITUTE A**

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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 STATE AFFAIRS AND GOVERNMENT -- DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

Introduced By: Senators McCaffrey, Anderson, Mack, Calkin, and DiMario

Date Introduced: April 05, 2022

Referred To: Senate Environment & Agriculture

It is enacted by the General Assembly as follows:

1           SECTION 1. Sections 42-17.1-2 and 42-17.1-4 of the General Laws in Chapter 42-17.1  
2 entitled "Department of Environmental Management" are hereby amended to read as follows:

3           **42-17.1-2. Powers and duties.**

4           The director of environmental management shall have the following powers and duties:

5           (1) To supervise and control the protection, development, planning, and utilization of the  
6 natural resources of the state, such resources, including, but not limited to: water, plants, trees, soil,  
7 clay, sand, gravel, rocks and other minerals, air, mammals, birds, reptiles, amphibians, fish,  
8 shellfish, and other forms of aquatic, insect, and animal life;

9           (2) To exercise all functions, powers, and duties heretofore vested in the department of  
10 agriculture and conservation, and in each of the divisions of the department, such as the promotion  
11 of agriculture and animal husbandry in their several branches, including the inspection and  
12 suppression of contagious diseases among animals; the regulation of the marketing of farm  
13 products; the inspection of orchards and nurseries; the protection of trees and shrubs from injurious  
14 insects and diseases; protection from forest fires; the inspection of apiaries and the suppression of  
15 contagious diseases among bees; the prevention of the sale of adulterated or misbranded  
16 agricultural seeds; promotion and encouragement of the work of farm bureaus, in cooperation with  
17 the University of Rhode Island, farmers' institutes, and the various organizations established for the  
18 purpose of developing an interest in agriculture; together with such other agencies and activities as

1 the governor and the general assembly may, from time to time, place under the control of the  
2 department; and as heretofore vested by such of the following chapters and sections of the general  
3 laws as are presently applicable to the department of environmental management and that were  
4 previously applicable to the department of natural resources and the department of agriculture and  
5 conservation or to any of its divisions: chapters 1 through 22, inclusive, as amended, in title 2  
6 entitled "Agriculture and Forestry"; chapters 1 through 17, inclusive, as amended, in title 4 entitled  
7 "Animals and Animal Husbandry"; chapters 1 through 19, inclusive, as amended, in title 20 entitled  
8 "Fish and Wildlife"; chapters 1 through 32, inclusive, as amended, in title 21 entitled "Food and  
9 Drugs"; chapter 7 of title 23, as amended, entitled "Mosquito Abatement"; and by any other general  
10 or public law relating to the department of agriculture and conservation or to any of its divisions or  
11 bureaus; [no powers or duties granted herein shall be construed to abrogate the powers or duties](#)  
12 [granted to the natural heritage preservation commission under chapter 17.5 of title 42 and chapter](#)  
13 [122 of title 42, as amended;](#)

14 (3) To exercise all the functions, powers, and duties heretofore vested in the division of  
15 parks and recreation of the department of public works by chapters 1, 2, and 5 in title 32 entitled  
16 "Parks and Recreational Areas"; by chapter 22.5 of title 23, as amended, entitled "Drowning  
17 Prevention and Lifesaving"; and by any other general or public law relating to the division of parks  
18 and recreation; [no powers or duties granted herein shall be construed to abrogate the powers or](#)  
19 [duties granted to the natural heritage preservation commission under chapter 17.5 of title 42 and](#)  
20 [chapter 122 of title 42, as amended;](#)

21 (4) To exercise all the functions, powers, and duties heretofore vested in the division of  
22 harbors and rivers of the department of public works, or in the department itself by such as were  
23 previously applicable to the division or the department, of chapters 1 through 22 and sections  
24 thereof, as amended, in title 46 entitled "Waters and Navigation"; and by any other general or public  
25 law relating to the division of harbors and rivers;

26 (5) To exercise all the functions, powers, and duties heretofore vested in the department of  
27 health by chapters 25, 18.9, and 19.5 of title 23, as amended, entitled "Health and Safety"; and by  
28 chapters 12 and 16 of title 46, as amended, entitled "Waters and Navigation"; by chapters 3, 4, 5,  
29 6, 7, 9, 11, 13, 18, and 19 of title 4, as amended, entitled "Animals and Animal Husbandry"; and  
30 those functions, powers, and duties specifically vested in the director of environmental  
31 management by the provisions of § 21-2-22, as amended, entitled "Inspection of Animals and  
32 Milk"; together with other powers and duties of the director of the department of health as are  
33 incidental to, or necessary for, the performance of the functions transferred by this section;

34 (6) To cooperate with the Rhode Island commerce corporation in its planning and

1 promotional functions, particularly in regard to those resources relating to agriculture, fisheries,  
2 and recreation;

3 (7) To cooperate with, advise, and guide conservation commissions of cities and towns  
4 created under chapter 35 of title 45 entitled "Conservation Commissions", as enacted by chapter  
5 203 of the Public Laws, 1960;

6 (8) To assign or reassign, with the approval of the governor, any functions, duties, or  
7 powers established by this chapter to any agency within the department, except as hereinafter  
8 limited;

9 (9) To cooperate with the water resources board and to provide to the board facilities,  
10 administrative support, staff services, and other services as the board shall reasonably require for  
11 its operation and, in cooperation with the board and the statewide planning program, to formulate  
12 and maintain a long-range guide plan and implementing program for development of major water-  
13 sources transmission systems needed to furnish water to regional- and local-distribution systems;

14 (10) To cooperate with the solid waste management corporation and to provide to the  
15 corporation such facilities, administrative support, staff services, and other services within the  
16 department as the corporation shall reasonably require for its operation;

17 (11) To provide for the maintenance of waterways and boating facilities, consistent with  
18 chapter 6.1 of title 46, by: (i) Establishing minimum standards for upland beneficial use and  
19 disposal of dredged material; (ii) Promulgating and enforcing rules for water quality, ground water  
20 protection, and fish and wildlife protection pursuant to § 42-17.1-24; (iii) Planning for the upland  
21 beneficial use and/or disposal of dredged material in areas not under the jurisdiction of the council  
22 pursuant to § 46-23-6(2); and (iv) Cooperating with the coastal resources management council in  
23 the development and implementation of comprehensive programs for dredging as provided for in  
24 §§ 46-23-6(1)(ii)(H) and 46-23-18.3; and (v) Monitoring dredge material management and disposal  
25 sites in accordance with the protocols established pursuant to § 46-6.1-5(a)(3) and the  
26 comprehensive program provided for in § 46-23-6(1)(ii)(H); no powers or duties granted herein  
27 shall be construed to abrogate the powers or duties granted to the coastal resources management  
28 council under chapter 23 of title 46, as amended;

29 (12) To establish minimum standards, subject to the approval of the environmental  
30 standards board, relating to the location, design, construction, and maintenance of all sewage-  
31 disposal systems;

32 (13) To enforce, by such means as provided by law, the standards for the quality of air, and  
33 water, and the design, construction, and operation of all sewage-disposal systems; any order or  
34 notice issued by the director relating to the location, design, construction, or maintenance of a

1 sewage-disposal system shall be eligible for recordation under chapter 13 of title 34. The director  
2 shall forward the order or notice to the city or town wherein the subject property is located and the  
3 order or notice shall be recorded in the general index by the appropriate municipal official in the  
4 land evidence records in the city or town wherein the subject property is located. Any subsequent  
5 transferee of that property shall be responsible for complying with the requirements of the order or  
6 notice. Upon satisfactory completion of the requirements of the order or notice, the director shall  
7 provide written notice of the same, which notice shall be similarly eligible for recordation. The  
8 original written notice shall be forwarded to the city or town wherein the subject property is located  
9 and the notice of satisfactory completion shall be recorded in the general index by the appropriate  
10 municipal official in the land evidence records in the city or town wherein the subject property is  
11 located. A copy of the written notice shall be forwarded to the owner of the subject property within  
12 five (5) days of a request for it, and, in any event, shall be forwarded to the owner of the subject  
13 property within thirty (30) days after correction;

14 (14) To establish minimum standards for the establishment and maintenance of salutary  
15 environmental conditions, including standards and methods for the assessment and the  
16 consideration of the cumulative effects on the environment of regulatory actions and decisions,  
17 which standards for consideration of cumulative effects shall provide for: (i) Evaluation of potential  
18 cumulative effects that could adversely affect public health and/or impair ecological functioning;  
19 (ii) Analysis of other matters relative to cumulative effects as the department may deem appropriate  
20 in fulfilling its duties, functions, and powers; which standards and methods shall only be applicable  
21 to ISDS systems in the town of Jamestown in areas that are dependent for water supply on private  
22 and public wells, unless broader use is approved by the general assembly. The department shall  
23 report to the general assembly not later than March 15, 2008, with regard to the development and  
24 application of the standards and methods in Jamestown;

25 (15) To establish and enforce minimum standards for permissible types of septage,  
26 industrial-waste disposal sites, and waste-oil disposal sites;

27 (16) To establish minimum standards, subject to the approval of the environmental  
28 standards board, for permissible types of refuse disposal facilities; the design, construction,  
29 operation, and maintenance of disposal facilities; and the location of various types of facilities;

30 (17) To exercise all functions, powers, and duties necessary for the administration of  
31 chapter 19.1 of title 23 entitled "Rhode Island Hazardous Waste Management Act";

32 (18) To designate, in writing, any person in any department of the state government or any  
33 official of a district, county, city, town, or other governmental unit, with that official's consent, to  
34 enforce any rule, regulation, or order promulgated and adopted by the director under any provision

1 of law; provided, however, that enforcement of powers of the coastal resources management  
2 council shall be assigned only to employees of the department of environmental management,  
3 except by mutual agreement or as otherwise provided in chapter 23 of title 46;

4 (19) To issue and enforce the rules, regulations, and orders as may be necessary to carry  
5 out the duties assigned to the director and the department by any provision of law; and to conduct  
6 investigations and hearings and to issue, suspend, and revoke licenses as may be necessary to  
7 enforce those rules, regulations, and orders. Any license suspended under the rules, regulations,  
8 and/or orders shall be terminated and revoked if the conditions that led to the suspension are not  
9 corrected to the satisfaction of the director within two (2) years; provided that written notice is  
10 given by certified mail, return receipt requested, no less than sixty (60) days prior to the date of  
11 termination.

12 Notwithstanding the provisions of § 42-35-9 to the contrary, no informal disposition of a  
13 contested licensing matter shall occur where resolution substantially deviates from the original  
14 application unless all interested parties shall be notified of the proposed resolution and provided  
15 with opportunity to comment upon the resolution pursuant to applicable law and any rules and  
16 regulations established by the director;

17 (20) To enter, examine, or survey, at any reasonable time, places as the director deems  
18 necessary to carry out his or her responsibilities under any provision of law subject to the following  
19 provisions:

20 (i) For criminal investigations, the director shall, pursuant to chapter 5 of title 12, seek a  
21 search warrant from an official of a court authorized to issue warrants, unless a search without a  
22 warrant is otherwise allowed or provided by law;

23 (ii)(A) All administrative inspections shall be conducted pursuant to administrative  
24 guidelines promulgated by the department in accordance with chapter 35 of this title;

25 (B) A warrant shall not be required for administrative inspections if conducted under the  
26 following circumstances, in accordance with the applicable constitutional standards:

27 (I) For closely regulated industries;

28 (II) In situations involving open fields or conditions that are in plain view;

29 (III) In emergency situations;

30 (IV) In situations presenting an imminent threat to the environment or public health, safety,  
31 or welfare;

32 (V) If the owner, operator, or agent in charge of the facility, property, site, or location  
33 consents; or

34 (VI) In other situations in which a warrant is not constitutionally required.

1 (C) Whenever it shall be constitutionally or otherwise required by law, or whenever the  
2 director in his or her discretion deems it advisable, an administrative search warrant, or its  
3 functional equivalent, may be obtained by the director from a neutral magistrate for the purpose of  
4 conducting an administrative inspection. The warrant shall be issued in accordance with the  
5 applicable constitutional standards for the issuance of administrative search warrants. The  
6 administrative standard of probable cause, not the criminal standard of probable cause, shall apply  
7 to applications for administrative search warrants;

8 (I) The need for, or reliance upon, an administrative warrant shall not be construed as  
9 requiring the department to forfeit the element of surprise in its inspection efforts;

10 (II) An administrative warrant issued pursuant to this subsection must be executed and  
11 returned within ten (10) days of its issuance date unless, upon a showing of need for additional  
12 time, the court orders otherwise;

13 (III) An administrative warrant may authorize the review and copying of documents that  
14 are relevant to the purpose of the inspection. If documents must be seized for the purpose of  
15 copying, and the warrant authorizes the seizure, the person executing the warrant shall prepare an  
16 inventory of the documents taken. The time, place, and manner regarding the making of the  
17 inventory shall be set forth in the terms of the warrant itself, as dictated by the court. A copy of the  
18 inventory shall be delivered to the person from whose possession or facility the documents were  
19 taken. The seized documents shall be copied as soon as feasible under circumstances preserving  
20 their authenticity, then returned to the person from whose possession or facility the documents were  
21 taken;

22 (IV) An administrative warrant may authorize the taking of samples of air, water, or soil  
23 or of materials generated, stored, or treated at the facility, property, site, or location. Upon request,  
24 the department shall make split samples available to the person whose facility, property, site, or  
25 location is being inspected;

26 (V) Service of an administrative warrant may be required only to the extent provided for  
27 in the terms of the warrant itself, by the issuing court.

28 (D) Penalties. Any willful and unjustified refusal of right of entry and inspection to  
29 department personnel pursuant to an administrative warrant shall constitute a contempt of court and  
30 shall subject the refusing party to sanctions, which in the court's discretion may result in up to six  
31 (6) months imprisonment and/or a monetary fine of up to ten thousand dollars (\$10,000) per refusal;

32 (21) To give notice of an alleged violation of law to the person responsible therefor  
33 whenever the director determines that there are reasonable grounds to believe that there is a  
34 violation of any provision of law within his or her jurisdiction or of any rule or regulation adopted

1 pursuant to authority granted to him or her. Nothing in this chapter shall limit the authority of the  
2 attorney general to prosecute offenders as required by law;

3 (i) The notice shall provide for a time within which the alleged violation shall be remedied,  
4 and shall inform the person to whom it is directed that a written request for a hearing on the alleged  
5 violation may be filed with the director within twenty (20) days after service of the notice. The  
6 notice will be deemed properly served upon a person if a copy thereof is served him or her  
7 personally; or sent by registered or certified mail to his or her last known address; or if he or she is  
8 served with notice by any other method of service now or hereafter authorized in a civil action  
9 under the laws of this state. If no written request for a hearing is made to the director within twenty  
10 (20) days of the service of notice, the notice shall automatically become a compliance order;

11 (ii)(A) Whenever the director determines that there exists a violation of any law, rule, or  
12 regulation within his or her jurisdiction that requires immediate action to protect the environment,  
13 he or she may, without prior notice of violation or hearing, issue an immediate-compliance order  
14 stating the existence of the violation and the action he or she deems necessary. The compliance  
15 order shall become effective immediately upon service or within such time as is specified by the  
16 director in such order. No request for a hearing on an immediate-compliance order may be made;

17 (B) Any immediate-compliance order issued under this section without notice and prior  
18 hearing shall be effective for no longer than forty-five (45) days; provided, however, that for good  
19 cause shown, the order may be extended one additional period not exceeding forty-five (45) days;

20 (iii) The director may, at his or her discretion and for the purposes of timely and effective  
21 resolution and return to compliance, cite a person for alleged noncompliance through the issuance  
22 of an expedited citation in accordance with § 42-17.6-3(c);

23 (iv) If a person upon whom a notice of violation has been served under the provisions of  
24 this section or if a person aggrieved by any such notice of violation requests a hearing before the  
25 director within twenty (20) days of the service of notice of violation, the director shall set a time  
26 and place for the hearing, and shall give the person requesting that hearing at least five (5) days'  
27 written notice thereof. After the hearing, the director may make findings of fact and shall sustain,  
28 modify, or withdraw the notice of violation. If the director sustains or modifies the notice, that  
29 decision shall be deemed a compliance order and shall be served upon the person responsible in  
30 any manner provided for the service of the notice in this section;

31 (v) The compliance order shall state a time within which the violation shall be remedied,  
32 and the original time specified in the notice of violation shall be extended to the time set in the  
33 order;

34 (vi) Whenever a compliance order has become effective, whether automatically where no

1 hearing has been requested, where an immediate compliance order has been issued, or upon  
2 decision following a hearing, the director may institute injunction proceedings in the superior court  
3 of the state for enforcement of the compliance order and for appropriate temporary relief, and in  
4 that proceeding, the correctness of a compliance order shall be presumed and the person attacking  
5 the order shall bear the burden of proving error in the compliance order, except that the director  
6 shall bear the burden of proving in the proceeding the correctness of an immediate compliance  
7 order. The remedy provided for in this section shall be cumulative and not exclusive and shall be  
8 in addition to remedies relating to the removal or abatement of nuisances or any other remedies  
9 provided by law;

10 (vii) Any party aggrieved by a final judgment of the superior court may, within thirty (30)  
11 days from the date of entry of such judgment, petition the supreme court for a writ of certiorari to  
12 review any questions of law. The petition shall set forth the errors claimed. Upon the filing of the  
13 petition with the clerk of the supreme court, the supreme court may, if it sees fit, issue its writ of  
14 certiorari;

15 (22) To impose administrative penalties in accordance with the provisions of chapter 17.6  
16 of this title and to direct that such penalties be paid into the account established by subdivision (26);

17 (23) The following definitions shall apply in the interpretation of the provisions of this  
18 chapter:

19 (i) Director: The term "director" shall mean the director of environmental management of  
20 the state of Rhode Island or his or her duly authorized agent;

21 (ii) Person: The term "person" shall include any individual, group of individuals, firm,  
22 corporation, association, partnership, or private or public entity, including a district, county, city,  
23 town, or other governmental unit or agent thereof, and in the case of a corporation, any individual  
24 having active and general supervision of the properties of the corporation; (iii) Service: (A)

25 Service upon a corporation under this section shall be deemed to include service upon both  
26 the corporation and upon the person having active and general supervision of the properties of the  
27 corporation;

28 (B) For purposes of calculating the time within which a claim for a hearing is made  
29 pursuant to subdivision (21)(i), service shall be deemed to be the date of receipt of such notice or  
30 three (3) days from the date of mailing of the notice, whichever shall first occur;

31 (24)(i) To conduct surveys of the present private and public camping and other recreational  
32 areas available and to determine the need for and location of other camping and recreational areas  
33 as may be deemed necessary and in the public interest of the state of Rhode Island and to report  
34 back its findings on an annual basis to the general assembly on or before March 1 of every year;



1 (ii) Additionally, the director of the department of environmental management shall take  
2 additional steps, including, but not limited to, matters related to funding as may be necessary to  
3 establish such other additional recreational facilities and areas as are deemed to be in the public  
4 interest;

5 (25)(i) To apply for and accept grants and bequests of funds, with the approval of the  
6 director of administration, from other states, interstate agencies, and independent authorities, and  
7 private firms, individuals, and foundations, for the purpose of carrying out his or her lawful  
8 responsibilities. The funds shall be deposited with the general treasurer in a restricted receipt  
9 account created in the natural resources program for funds made available for that program's  
10 purposes or in a restricted receipt account created in the environmental protection program for  
11 funds made available for that program's purposes. All expenditures from the accounts shall be  
12 subject to appropriation by the general assembly, and shall be expended in accordance with the  
13 provisions of the grant or bequest. In the event that a donation or bequest is unspecified, or in the  
14 event that the trust account balance shows a surplus after the project as provided for in the grant or  
15 bequest has been completed, the director may utilize the appropriated unspecified or appropriated  
16 surplus funds for enhanced management of the department's forest and outdoor public recreation  
17 areas, or other projects or programs that promote the accessibility of recreational opportunities for  
18 Rhode Island residents and visitors;

19 (ii) The director shall submit to the house fiscal advisor and the senate fiscal advisor, by  
20 October 1 of each year, a detailed report on the amount of funds received and the uses made of such  
21 funds;

22 (26) To establish fee schedules by regulation, with the approval of the governor, for the  
23 processing of applications and the performing of related activities in connection with the  
24 department's responsibilities pursuant to subsection (12); chapter 19.1 of title 23, as it relates to  
25 inspections performed by the department to determine compliance with chapter 19.1 and rules and  
26 regulations promulgated in accordance therewith; chapter 18.9 of title 23, as it relates to inspections  
27 performed by the department to determine compliance with chapter 18.9 and the rules and  
28 regulations promulgated in accordance therewith; chapters 19.5 and 23 of title 23; chapter 12 of  
29 title 46, insofar as it relates to water-quality certifications and related reviews performed pursuant  
30 to provisions of the federal Clean Water Act, 33 U.S.C. § 1251 et seq.; the regulation and  
31 administration of underground storage tanks and all other programs administered under chapter 12  
32 of title 46 and § 2-1-18 et seq., and chapter 13.1 of title 46 and chapter 13.2 of title 46, insofar as  
33 they relate to any reviews and related activities performed under the provisions of the Groundwater  
34 Protection Act; chapter 24.9 of title 23 as it relates to the regulation and administration of mercury-

1 added products; and chapter 17.7 of this title, insofar as it relates to administrative appeals of all  
2 enforcement, permitting and licensing matters to the administrative adjudication division for  
3 environmental matters. Two (2) fee ranges shall be required: for "Appeal of enforcement actions,"  
4 a range of fifty dollars (\$50) to one hundred dollars (\$100), and for "Appeal of application  
5 decisions," a range of five hundred dollars (\$500) to ten thousand dollars (\$10,000). The monies  
6 from the administrative adjudication fees will be deposited as general revenues and the amounts  
7 appropriated shall be used for the costs associated with operating the administrative adjudication  
8 division.

9         There is hereby established an account within the general fund to be called the water and  
10 air protection program. The account shall consist of sums appropriated for water and air pollution  
11 control and waste-monitoring programs and the state controller is hereby authorized and directed  
12 to draw his or her orders upon the general treasurer for the payment of the sums, or portions thereof,  
13 as may be required, from time to time, upon receipt by him or her of properly authenticated  
14 vouchers. All amounts collected under the authority of this subdivision for the sewage-disposal-  
15 system program and freshwater wetlands program will be deposited as general revenues and the  
16 amounts appropriated shall be used for the purposes of administering and operating the programs.  
17 The director shall submit to the house fiscal advisor and the senate fiscal advisor by January 15 of  
18 each year a detailed report on the amount of funds obtained from fines and fees and the uses made  
19 of the funds;

20         (27) To establish and maintain a list or inventory of areas within the state worthy of special  
21 designation as "scenic" to include, but not be limited to, certain state roads or highways, scenic  
22 vistas, and scenic areas, and to make the list available to the public;

23         (28) To establish and maintain an inventory of all interests in land held by public and  
24 private land trust and to exercise all powers vested herein to ensure the preservation of all identified  
25 lands;

26         (i) The director may promulgate and enforce rules and regulations to provide for the orderly  
27 and consistent protection, management, continuity of ownership and purpose, and centralized  
28 records-keeping for lands, water, and open spaces owned in fee or controlled in full or in part  
29 through other interests, rights, or devices such as conservation easements or restrictions, by private  
30 and public land trusts in Rhode Island. The director may charge a reasonable fee for filing of each  
31 document submitted by a land trust;

32         (ii) The term "public land trust" means any public instrumentality created by a Rhode Island  
33 municipality for the purposes stated herein and financed by means of public funds collected and  
34 appropriated by the municipality. The term "private land trust" means any group of five (5) or more

1 private citizens of Rhode Island who shall incorporate under the laws of Rhode Island as a  
2 nonbusiness corporation for the purposes stated herein, or a national organization such as the nature  
3 conservancy. The main purpose of either a public or a private land trust shall be the protection,  
4 acquisition, or control of land, water, wildlife, wildlife habitat, plants, and/or other natural features,  
5 areas, or open space for the purpose of managing or maintaining, or causing to be managed or  
6 maintained by others, the land, water, and other natural amenities in any undeveloped and relatively  
7 natural state in perpetuity. A private land trust must be granted exemption from federal income tax  
8 under Internal Revenue Code 501(c)(3) [26 U.S.C. § 501(c)(3)] within two (2) years of its  
9 incorporation in Rhode Island or it may not continue to function as a land trust in Rhode Island. A  
10 private land trust may not be incorporated for the exclusive purpose of acquiring or accepting  
11 property or rights in property from a single individual, family, corporation, business, partnership,  
12 or other entity. Membership in any private land trust must be open to any individual subscribing to  
13 the purposes of the land trust and agreeing to abide by its rules and regulations including payment  
14 of reasonable dues;

15 (iii)(A) Private land trusts will, in their articles of association or their bylaws, as  
16 appropriate, provide for the transfer to an organization, created for the same or similar purposes, of  
17 the assets, lands and land rights, and interests held by the land trust in the event of termination or  
18 dissolution of the land trust;

19 (B) All land trusts, public and private, will record in the public records, of the appropriate  
20 towns and cities in Rhode Island, all deeds, conservation easements, or restrictions or other interests  
21 and rights acquired in land and will also file copies of all such documents and current copies of  
22 their articles of association, their bylaws, and their annual reports with the secretary of state and  
23 with the director of the Rhode Island department of environmental management. The director is  
24 hereby directed to establish and maintain permanently a system for keeping records of all private  
25 and public land trust land holdings in Rhode Island;

26 (29) The director will contact in writing, not less often than once every two (2) years, each  
27 public or private land trust to ascertain: that all lands held by the land trust are recorded with the  
28 director; the current status and condition of each land holding; that any funds or other assets of the  
29 land trust held as endowment for specific lands have been properly audited at least once within the  
30 two-year (2) period; the name of the successor organization named in the public or private land  
31 trust's bylaws or articles of association; and any other information the director deems essential to  
32 the proper and continuous protection and management of land and interests or rights in land held  
33 by the land trust. In the event that the director determines that a public or private land trust holding  
34 land or interest in land appears to have become inactive, he or she shall initiate proceedings to

1 effect the termination of the land trust and the transfer of its lands, assets, land rights, and land  
2 interests to the successor organization named in the defaulting trust's bylaws or articles of  
3 association or to another organization created for the same or similar purposes. Should such a  
4 transfer not be possible, then the land trust, assets, and interest and rights in land will be held in  
5 trust by the state of Rhode Island and managed by the director for the purposes stated at the time  
6 of original acquisition by the trust. Any trust assets or interests other than land or rights in land  
7 accruing to the state under such circumstances will be held and managed as a separate fund for the  
8 benefit of the designated trust lands;

9 (30) Consistent with federal standards, issue and enforce such rules, regulations, and orders  
10 as may be necessary to establish requirements for maintaining evidence of financial responsibility  
11 for taking corrective action and compensating third parties for bodily injury and property damage  
12 caused by sudden and non-sudden accidental releases arising from operating underground storage  
13 tanks;

14 (31) To enforce, by such means as provided by law, the standards for the quality of air, and  
15 water, and the location, design, construction, and operation of all underground storage facilities  
16 used for storing petroleum products or hazardous materials; any order or notice issued by the  
17 director relating to the location, design, construction, operation, or maintenance of an underground  
18 storage facility used for storing petroleum products or hazardous materials shall be eligible for  
19 recordation under chapter 13 of title 34. The director shall forward the order or notice to the city or  
20 town wherein the subject facility is located, and the order or notice shall be recorded in the general  
21 index by the appropriate municipal officer in the land-evidence records in the city or town wherein  
22 the subject facility is located. Any subsequent transferee of that facility shall be responsible for  
23 complying with the requirements of the order or notice. Upon satisfactory completion of the  
24 requirements of the order or notice, the director shall provide written notice of the same, which  
25 notice shall be eligible for recordation. The original, written notice shall be forwarded to the city  
26 or town wherein the subject facility is located, and the notice of satisfactory completion shall be  
27 recorded in the general index by the appropriate municipal official in the land-evidence records in  
28 the city or town wherein the subject facility is located. A copy of the written notice shall be  
29 forwarded to the owner of the subject facility within five (5) days of a request for it, and, in any  
30 event, shall be forwarded to the owner of the subject facility within thirty (30) days after correction;

31 (32) To manage and disburse any and all funds collected pursuant to § 46-12.9-4, in  
32 accordance with § 46-12.9-5, and other provisions of the Rhode Island Underground Storage Tank  
33 Financial Responsibility Act, as amended;

34 (33) To support, facilitate, and assist the Rhode Island Natural History Survey, as

1 appropriate and/or as necessary, in order to accomplish the important public purposes of the survey  
2 in gathering and maintaining data on Rhode Island natural history; making public presentations and  
3 reports on natural history topics; ranking species and natural communities; monitoring rare species  
4 and communities; consulting on open-space acquisitions and management plans; reviewing  
5 proposed federal and state actions and regulations with regard to their potential impact on natural  
6 communities; and seeking outside funding for wildlife management, land management, and  
7 research;

8 (34) To promote the effective stewardship of lakes, ponds, rivers, and streams including,  
9 but not limited to, collaboration with watershed organizations and associations of lakefront property  
10 owners on planning and management actions that will prevent and mitigate water quality  
11 degradation, reduce the loss of native habitat due to infestation of non-native species, abate  
12 nuisance conditions that result from excessive growth of algal or non-native plant species as well  
13 as promote healthy freshwater riverine ecosystems;

14 (35) In implementing the programs established pursuant to this chapter, to identify critical  
15 areas for improving service to customers doing business with the department, and to develop and  
16 implement strategies to improve performance and effectiveness in those areas. Key aspects of a  
17 customer-service program shall include, but not necessarily be limited to, the following  
18 components:

19 (i) Maintenance of an organizational unit within the department with the express purpose  
20 of providing technical assistance to customers and helping customers comply with environmental  
21 regulations and requirements;

22 (ii) Maintenance of an employee-training program to promote customer service across the  
23 department;

24 (iii) Implementation of a continuous business process evaluation and improvement effort,  
25 including process reviews to encourage development of quality proposals; ensure timely and  
26 predictable reviews; and result in effective decisions and consistent follow up and implementation  
27 throughout the department; and publish an annual report on such efforts;

28 (iv) Creation of a centralized location for the acceptance of permit applications and other  
29 submissions to the department;

30 (v) Maintenance of a process to promote, organize, and facilitate meetings prior to the  
31 submission of applications or other proposals in order to inform the applicant on options and  
32 opportunities to minimize environmental impact; improve the potential for sustainable  
33 environmental compliance; and support an effective and efficient review and decision-making  
34 process on permit applications related to the proposed project;

1 (vi) Development of single permits under multiple authorities otherwise provided in state  
2 law to support comprehensive and coordinated reviews of proposed projects. The director may  
3 address and resolve conflicting or redundant process requirements in order to achieve an effective  
4 and efficient review process that meets environmental objectives; and

5 (vii) Exploration of the use of performance-based regulations coupled with adequate  
6 inspection and oversight, as an alternative to requiring applications or submissions for approval  
7 prior to initiation of projects. The department shall work with the office of regulatory reform to  
8 evaluate the potential for adopting alternative compliance approaches and provide a report to the  
9 governor and the general assembly by May 1, 2015;

10 (36) To formulate and promulgate regulations requiring any dock or pier longer than twenty  
11 feet (20') and located on a freshwater lake or pond to be equipped with reflective materials, on all  
12 sides facing the water, of an appropriate width and luminosity such that it can be seen by operators  
13 of watercraft; and

14 (37) To temporarily waive any control or prohibition respecting the use of a fuel or fuel  
15 additive required or regulated by the department if the director finds that:

16 (i) Extreme or unusual fuel or fuel additive supply circumstances exist in the state or the  
17 New England region that prevent the distribution of an adequate supply of the fuel or fuel additive  
18 to consumers;

19 (ii) Extreme or unusual fuel or fuel additive supply circumstances are the result of a natural  
20 disaster, an act of God, a pipeline or refinery equipment failure, or another event that could not  
21 reasonably have been foreseen; and

22 (iii) It is in the public interest to grant the waiver.

23 Any temporary waiver shall be made in writing and shall be effective for twenty (20)  
24 calendar days; provided, that the director may renew the temporary waiver, in writing, if it is  
25 deemed necessary.

26 **42-17.1-4. Divisions within department.**

27 Within the department of environmental management there are established the following  
28 divisions:

29 (1) A division of parks and recreation that shall carry out those functions of the department  
30 relating to the operation and maintenance of parks and recreation areas and the establishment and  
31 maintenance of such additional recreation areas as may from time to time be acquired and such  
32 other functions and duties as may, from time to time, be assigned by the director; [no powers or  
33 duties granted herein shall be construed to abrogate the powers or duties granted to the natural  
34 heritage preservation commission under chapter 17.5 of title 42 and chapter 122 of title 42, as](#)

1 [amended:](#)

2 (2) A division of fish and wildlife management that shall carry out those functions of the  
3 department relating to the administration and management of hunting and freshwater fishing; the  
4 preservation of wetlands, marsh lands, freshwater lakes, streams, ponds, and wildlife; and such  
5 other related functions and duties as may be assigned by the director; [no powers or duties granted](#)  
6 [herein shall be construed to abrogate the powers or duties granted to the natural heritage](#)  
7 [preservation commission under chapter 17.5 of title 42 and chapter 122 of title 42, as amended;](#)

8 (3) A division of agriculture that shall carry out those functions of the department relating  
9 to agriculture, and such other functions and duties as may from time to time be assigned by the  
10 director, including, but not limited to, plant industry, farm viability, marketing and promotion,  
11 farmland ecology and protection, plant and animal health and quarantine, pesticides, mosquito  
12 abatement, pest survey and response, food policy and security, and, in collaboration with the  
13 department of health, public health as it relates to farm production and direct marketing of farm  
14 products, and those agreed upon through memorandum of agreement with the department of health  
15 or other state agencies. The department of health shall continue to act as the lead agency for all  
16 public health issues in the state pursuant to chapter 1 of title 23. Nothing herein contained shall  
17 limit the department of health's statutory authority, nor shall any provision herein be construed as  
18 a limitation upon the statutory authority of the department of health granted to the department under  
19 title 23, nor shall any provision herein be construed to limit the authority of the department of  
20 environmental management to enter into memoranda of agreement with any governmental agency.  
21 The chief of the division of agriculture shall report directly to the director; [no powers or duties](#)  
22 [granted herein shall be construed to abrogate the powers or duties granted to the natural heritage](#)  
23 [preservation commission under chapter 17.5 of title 42 and chapter 122 of title 42, as amended;](#)

24 (4) A division of coastal resources that shall carry out those functions of the department  
25 relating to harbors and harbor lines, pilotage, flood control, shore development, construction of port  
26 facilities, and the registration of boats and such other functions and duties as may, from time to  
27 time, be assigned by the director, except that the division shall not be responsible for the functions  
28 of inspection of dams and reservoirs, approving plans for construction or improvement of dams,  
29 reservoirs, and other structures in non-tidal waters, and the operation of stream-gauging stations in  
30 cooperation with the United States Geological Survey, and provided, further, that the division and  
31 its staff shall be responsible through the director of environmental management to the coastal  
32 resources management council, and the chief and the staff of the division shall serve as staff to the  
33 council;

34 (5) A division of planning and development that shall carry out those functions of the

1 department relating to planning, programming, acquisition of land, engineering studies, and such  
2 other studies, as the director may direct, and that shall work with the Rhode Island board of  
3 education, with educational institutions at all levels, and with the public in the dissemination of  
4 information and education relating to natural resources, and shall perform the publication and  
5 public relations functions of the department, the functions of inspection of dams and reservoirs,  
6 approving plans for construction or improvement of dams, reservoirs, and other structures in non-  
7 tidal waters, and the operation of stream-gauging stations in cooperation with the United States  
8 Geological Survey;

9 (6) A division of enforcement that shall enforce all of the laws and regulations of the  
10 department and the coastal resources management council, that shall cooperate with the other  
11 enforcement agencies of the state and its municipalities, and that shall administer all of the policing,  
12 enforcing, licensing, registration, and inspection functions of the department and such other  
13 functions and duties as may, from time to time, be assigned by the director;

14 (7) A division of forest environment that shall carry out those functions of the department  
15 relating to the administration of forests and natural areas, including programs for utilization,  
16 conservation, forest fire protection, and improvements of these areas; assisting other agencies and  
17 local governments in urban programs relating to trees, forests, green belts, and environment and  
18 such other functions and duties as may, from time to time, be assigned by the director; [no powers  
19 or duties granted herein shall be construed to abrogate the powers or duties granted to the natural  
20 heritage preservation commission under chapter 17.5 of title 42 and chapter 122 of title 42, as  
21 amended;](#)

22 (8)(i) A division of boating safety that shall carry out those functions of the department  
23 relating to the development and administration of a coordinated, safe boating program in  
24 accordance with the Model Safe Boating Act of 1971 as approved by the National Association of  
25 State Boating Law Administrators.

26 (ii) Administration of the division of boating safety shall be the responsibility of the state  
27 boating law administrator whose duties shall include:

28 (A) The enforcement of all laws relating to the act; and

29 (B) The powers vested in the state boating law administrator and boating safety  
30 enforcement officer shall include the enforcement of laws, rules and regulations relating to  
31 "Regulation of Boats," chapter 22 of title 46 and shall also include the power to:

32 (I) Execute all warrants and search warrants for the violation of laws, rules, and regulations  
33 relating to the act.

34 (II) Serve subpoenas issued for the trial of all offenses hereunder.



1 (III) To carry firearms or other weapons, concealed or otherwise, in the course of, and in  
2 performance of, their duties under this chapter.

3 (IV) To arrest without warrant and on view any person found violating any law, rule, or  
4 regulation relating to the act; take that person before a court having jurisdiction for trial; detain that  
5 person in custody at the expense of the state until arraignment; and to make and execute complaints  
6 within any district to the justice or clerk of the court against any person for any of the offenses  
7 enumerated under the act committed within the district.

8 (V) Boating safety enforcement officers shall not be required to give surety for costs upon  
9 any complaint made by him or her.

10 (iii) The development and administration of a coordinated, safe boating program.

11 (iv) The establishment and enforcement of such rules and regulations as are deemed  
12 necessary to achieve the purposes of the Model Safe Boating Act as approved by the state boating  
13 law administrators.

14 (v) The state boating law administrator shall serve as the liaison to the United States Coast  
15 Guard; and

16 (9) A division of marine fisheries management that shall carry out those functions of the  
17 department relating to the administration, management, and harvest of marine animal and plant  
18 species found in Rhode Island marine waters, including, but not limited to: stock assessments of  
19 marine species; harvest of marine species regulated under a regional federal fisheries management  
20 plan; the review of aquaculture applications before the CRMC; a commercial fishing licensing  
21 program; fixing seasons, bag limits, size limits, possession limits, and methods of taking on any  
22 marine plant and animal species; and such other related functions and duties as may be assigned by  
23 the director.

24 SECTION 2. Sections 42-17.5-4 and 42-17.5-5 of the General Laws in Chapter 42-17.5  
25 entitled "Natural Heritage Preservation Program" are hereby amended to read as follows:

26 **42-17.5-4. Natural heritage preservation commission.**

27 (a)(1) There is established ~~within the department of environmental management~~ the natural  
28 heritage preservation commission consisting of ~~the directors of the department of environmental~~  
29 ~~management (who shall be chairperson) and the governor's office of intergovernmental relations,~~  
30 ~~and the chief of the division of statewide planning, department of administration~~ ten (10) members.  
31 Nine (9) members shall be appointed by the governor, with advice and consent of the senate. No  
32 less than three (3) commission members shall be environmental scientists. The commission shall  
33 include representation from the Rhode Island Natural History Survey and the Old Growth Tree  
34 Society.

1           (2) The members shall serve for terms of five (5) years each.

2           (3) Any vacancy occurring otherwise than by expiration of term shall be filled in the same  
3 manner as the original appointment.

4           (4) Upon expiration of a member's term, that member shall continue as a member until that  
5 member's successor is appointed and qualified. Any person serving a term shall be eligible for  
6 appointment.

7           (b) No member shall receive compensation for the performance of his or her duties as a  
8 member; provided, however, that each appointed member may be reimbursed if funds are  
9 appropriated for his or her actual and necessary expenses incurred during the performance of his or  
10 her official duties.

11           (c)(1) The commission shall designate annually from its members a chairperson and a vice  
12 chairperson.

13           (2) Whenever public hearings are required under this chapter, or whenever the commission  
14 determines a public hearing is appropriate, the commission shall use reasonable efforts to hold  
15 those hearings at a place or places that will reasonably accommodate the interested parties.

16           (3) Six (6) voting members of the commission shall constitute a quorum for the transaction  
17 of any business or the exercise of any power of the commission. Except as otherwise provided in  
18 this chapter, the commission shall have the power to act by a majority of the members present at  
19 any meeting at which a quorum is in attendance.

20           (d) A commission member may be removed for cause or misconduct in office only after  
21 the majority of the commission members vote in favor of the removal, after giving him or her a  
22 copy of the charges against him or her and an opportunity to be heard, in person or by counsel, in  
23 his or her defense, upon not less than ten (10) days' notice. If any member shall be removed, the  
24 chair or vice chair shall file in the office of the secretary of state a complete statement of charges  
25 made against the member and his or her findings, together with a complete record of the  
26 proceedings.

27           (e) The natural heritage preservation commission shall have the authority to establish  
28 subcommittees to fulfill the purposes of the commission.

29           (f) The director of the department of environmental management, or designee, shall serve  
30 ex officio.

31           **42-17.5-5. Powers and duties of commission.**

32           (a) The commission shall have power to:

33           (1) The primary responsibility of the natural heritage preservation commission shall be the  
34 preservation and management of the state's natural area preserves. The commission shall be able to

1 make any studies of conditions, activities, or problems of the state's natural area preserves needed  
2 to carry out its responsibilities;

3 (2) Identify all of the state's old growth forests, rare forest ecosystems, and if possible, all  
4 areas of most environmentally sensitive land and/or water containing habitat suitable for plant or  
5 animal life or geological features of biological, scientific, educational, geological, paleontological,  
6 or scenic value worthy of preservation in its natural condition, and so forth;

7 ~~(+)~~(3) Conduct such hearings, examinations, and investigations as may be necessary and  
8 appropriate to the conduct of its operations and the fulfillment of its responsibilities;

9 ~~(+)~~(4) Obtain access to public records and apply for the process of subpoena, if necessary,  
10 to produce books, papers, records, and other data;

11 (5) Retain by contract or employ counsel, auditors, engineers, appraisers, private  
12 consultants and advisors, or other personnel needed to provide necessary services;

13 (6) Serving as the lead state agency and initial and primary point of contact for old growth  
14 forests, rare forest ecosystems, and areas of most environmentally sensitive land and/or water  
15 containing habitat suitable for plant or animal life or geological features of biological, scientific,  
16 educational, geological, paleontological, or scenic value worthy of preservation in its natural  
17 condition;

18 (7) The natural heritage preservation commission shall have exclusive jurisdiction over the  
19 natural area preserves;

20 (8) The natural heritage preservation commission is authorized to formulate policies and  
21 plans and to adopt regulations necessary to implement its protections of old growth forests, rare  
22 forest ecosystems, and areas of most environmentally sensitive land and/or water containing habitat  
23 suitable for plant or animal life or geological features of biological, scientific, educational,  
24 geological, paleontological, or scenic value worthy of preservation in its natural condition in the  
25 natural areas preserves. This shall include establishing a definition for old growth forests;

26 ~~(+)~~(9) Set policies for the disbursement and repayment of loans from the natural heritage  
27 preservation revolving fund;

28 ~~(+)~~(10) Accept on behalf of the state, gifts, grants, or loans of funds, personal or real  
29 property, or services from any source, public or private, and comply, subject to the provisions of  
30 this chapter, with the terms and conditions thereof; and

31 ~~(+)~~(11) Accept, from a federal agency, loans or grants for use in carrying out its purposes  
32 and enter into agreement with the agency respecting any such loans or grants.

33 (b) The commission shall select from loan applicants those which meet all eligibility  
34 criteria and which the commission deems to be the most worthy of financing and shall make loans

1 to such applicants.

2 (c) The commission, consistent with the Administrative Procedures Act, chapter 35 of this  
3 title, shall:

4 (1) Develop criteria necessary for defining eligibility for loans;

5 (2) Prepare and adopt rules and regulating loan generation, disbursement, loan repayment,  
6 and mortgage covenants; and

7 (3) Establish procedures consistent with the purposes of this chapter to insure the long term  
8 preservation of irreplaceable open land resources and their passive recreational use by the public.

9 SECTION 3. The title of Chapter 42-122 of the General Laws entitled "Natural Areas  
10 Protection Act of 1993" is hereby amended to read as follows:

11 ~~CHAPTER 42-122~~

12 ~~Natural Areas Protection Act of 1993~~

13 CHAPTER 42-122

14 NATURAL AREAS PROTECTION ACT

15 SECTION 4. Sections 42-122-1, 42-122-3, 42-122-4, 42-122-5, 42-122-6 and 42-122-7 of  
16 the General Laws in Chapter 42-122 entitled "Natural Areas Protection Act of 1993" are hereby  
17 amended to read as follows:

18 **42-122-1. Title.**

19 This chapter shall be titled the "Natural Areas Protection Act ~~of 1993~~".

20 **42-122-3. Definitions.**

21 As used in this chapter:

22 (1) ~~"Director" means the director of the department of environmental management of the~~  
23 ~~state of Rhode Island~~ "Forestry operation" means any cutting, timber harvesting, girdling, or any  
24 alteration to a forest which is over one acre in size.

25 (2) "Natural area preserve" means areas of most environmentally sensitive land and/or  
26 water containing habitat suitable for plant or animal life or geological features of biological,  
27 scientific, educational, geological, paleontological, or scenic value worthy of preservation in its  
28 natural condition which has been approved by the ~~director~~ natural heritage preservation  
29 commission.

30 (3) "Natural heritage preservation commission" means the natural heritage preservation  
31 commission established under § 42-17.5-4.

32 **42-122-4. System of natural area preserves.**

33 The ~~director~~ natural heritage preservation commission shall establish a system of natural  
34 area preserves and shall have the responsibility as set forth in this chapter for selection of all natural

1 area preserves within the system, and shall ensure that these preserves are maintained in as natural  
2 and wild a state as is consistent with educational, scientific, biological, geological, paleontological,  
3 and scenic purposes. The ~~director~~ [natural heritage preservation commission](#) shall ensure the use of  
4 natural area preserves for research and other purposes consistent with the intent of this chapter. The  
5 ~~director~~ [natural heritage preservation commission](#) may adopt regulations for establishing and  
6 managing the natural area preserve system including, but not limited to, procedures for the adoption  
7 and revision of a management plan for each designated natural area preserve.

8 **42-122-5. Procedure for designation of non-state owned land as a natural area**  
9 **preserve.**

10 (a) The ~~director~~ [natural heritage preservation commission](#) may approve non-state owned  
11 land as a natural area preserve ~~only upon the recommendation of the natural heritage preservation~~  
12 ~~commission (established under § 42-17.5-4) and~~ only after a public hearing and upon notice. The  
13 notice required under this section shall set forth a description of the proposed action, including a  
14 description of the land to be offered, and the time and place of the hearing. The notice shall conform  
15 to the requirements of § 42-35-1 et seq.

16 (b) The natural heritage preservation commission shall review requests from  
17 municipalities, private land conservation organizations, and private landowners desiring  
18 designation of a parcel of land as a natural area preserve, ~~and make recommendations to the~~  
19 ~~director~~. Any request must include the written consent of the private landowner before any review  
20 shall commence. In making ~~recommendations~~ [designations](#), it shall be guided by the natural  
21 heritage program and other relevant sources of information about critical environmental resources.  
22 The natural heritage preservation commission may also, on its own initiative, make  
23 ~~recommendations for~~ designation of areas ~~to the director~~.

24 (c) To be designated a natural area preserve the property owner must voluntarily grant to  
25 the state of Rhode Island a conservation easement, which shall include the reasons for the  
26 designation, and prepare a management plan for the preserve that defines the methods by which the  
27 educational, scientific, biological, geological, paleontological, and/or scenic purposes of the  
28 designation shall be carried out. The conservation easement shall be recorded in the land evidence  
29 records in the city or town where the parcel is located.

30 (d) In areas under the jurisdiction of the coastal resource management council (CRMC),  
31 the ~~director~~ [natural heritage preservation commission](#) shall coordinate with the CRMC areas to be  
32 proposed for inclusion within the program.

33 **42-122-6. Procedures for designation of state-owned land as a natural area preserve.**

34 (a) A request for designation of state-owned land as a natural area preserve shall be made

1 to the ~~director~~ [natural heritage preservation commission](#), that request specifying the area to be  
2 designated, the reasons for the designation, the proposed management strategy necessary to protect  
3 the critical environmental resources within the area, and the changes that would be required in  
4 current management practices. The request for designation may be made by the director of any state  
5 agency for any parcel of land under the agency's control, but this is not a requirement. The natural  
6 heritage preservation commission shall review requests from private land conservation  
7 organizations and private individuals desiring designation of a parcel of state-owned land as a  
8 natural area preserve.

9 (b) The ~~director~~ [natural heritage preservation commission](#) may approve the designation of  
10 state-owned land as a preserve only after consultation with the managing agency, and after a public  
11 hearing. Notice requirements for the public hearing shall be the same as required under § 42-122-  
12 5(a). Before a preserve is designated, a management plan must be approved by the ~~director and~~  
13 ~~adopted by the department managing the preserve~~ [natural heritage preservation commission](#).

14 **42-122-7. Designation as a natural area preserve.**

15 An area designated as a natural area preserve is declared to be put to its highest, best and  
16 most important use for public benefit and no interest in this preserve owned by the state shall be  
17 alienated or put to any use other than as a natural area preserve, except upon a finding by the ~~director~~  
18 ~~in consultation with the~~ natural heritage preservation commission, that the qualifying features of  
19 the land have been destroyed or irretrievably damaged and that the public purposes of the  
20 designation have been utterly frustrated.

21 Any finding the ~~director~~ [natural heritage preservation commission](#) is required to make  
22 under this section shall be made only after a public hearing and upon notice. The notice required  
23 by this section shall set forth the substance of the proposed action and describe, with or without  
24 legal description, the area affected and shall set forth the time and place of the hearing and shall be  
25 published at least twice (2) a week for three (3) successive weeks before the hearing in a newspaper  
26 published in the county where the property is located and in a newspaper with statewide  
27 distribution. No finding, which the ~~director~~ [natural heritage preservation commission](#) is required to  
28 make, shall be effective until the finding has been published. No action shall be taken by the state  
29 pursuant to the finding prior to the expiration of sixty (60) days after the finding becomes effective.  
30 During the sixty (60) day period, any finding may be appealed by any resident of this state in a suit  
31 brought against the ~~director~~ [natural heritage preservation commission](#) in the superior court for the  
32 judicial district of Providence. In any action, the court shall vacate the finding if it finds the ~~director~~  
33 [natural heritage preservation commission](#) acted arbitrarily or illegally in making the finding. During  
34 the pendency of an appeal the state shall take no action pursuant to the findings of the ~~director~~

1 [natural heritage preservation commission.](#)

2 SECTION 5. Chapter 42-122 of the General Laws entitled "Natural Areas Protection Act  
3 of 1993" is hereby amended by adding thereto the following sections:

4 **42-122-8. Preservation of old growth forests and rare forest ecosystems.**

5 [\(a\) The general assembly recognizes that:](#)

6 [\(1\) Old growth forests are significant ecosystems where native trees and animals live.](#)

7 [\(2\) There are certain animals, insects, and birds that only live in old growth forests.](#)

8 [\(3\) There are also native tree species that might not come back if an old growth forest is](#)  
9 [cut.](#)

10 [\(4\) More species live in old growth forests than second growth forests.](#)

11 [\(5\) Old growth forests are important carbon sinks storing more carbon than an average](#)  
12 [Rhode Island forest, and if cut, would release its stored carbon into the atmosphere.](#)

13 [\(6\) Old growth forests are extremely rare, and once cut, might not come back for one](#)  
14 [hundred \(100\) years or more.](#)

15 [\(7\) Rhode Island's old growth forests are at serious risk of being cut for development to](#)  
16 [include, but not limited to, solar projects.](#)

17 [\(8\) It is a matter of public interest that old growth forests receive special consideration for](#)  
18 [management purposes.](#)

19 [\(9\) It is a matter of public interest that old growth forests are to be untouched and left in](#)  
20 [their perfect natural state.](#)

21 [\(b\) The natural heritage preservation commission shall be responsible for the protection of](#)  
22 [Rhode Island's old growth forests and rare forest ecosystems, as well as the many native species](#)  
23 [that live in these forests. In order to prevent the accidental destruction of old growth forests and](#)  
24 [rare forest ecosystems on public land, before any forestry operations take place on state land, or](#)  
25 [any land owned by the cities and towns in Rhode Island, the natural heritage preservation](#)  
26 [commission must be notified of the forestry operation no less than two \(2\) months in advance and](#)  
27 [given the opportunity to survey the site. All documents pertaining to the forestry operation must be](#)  
28 [turned over to the natural heritage preservation commission at the same time as the initial notice.](#)  
29 [If the natural heritage preservation commission determines an old growth forest or rare forest](#)  
30 [ecosystem is found on the site planned for the forestry operation, the natural heritage preservation](#)  
31 [commission has the authority to designate the site as a natural area preserve which would prohibit](#)  
32 [the forestry operation from taking place.](#)

33 [\(c\) Before any state or municipally funded forestry operations take place on private land,](#)  
34 [the natural heritage preservation commission must be notified of the forestry operation no less than](#)

1 two (2) months in advance and given the opportunity to survey the site. All documents pertaining  
2 to the forestry operation must be turned over to the natural heritage preservation commission at the  
3 same time as the initial notice. If the natural heritage preservation commission determines an old  
4 growth forest or rare forest ecosystem is found on the site planned for the forestry operation, the  
5 natural heritage preservation commission has the authority to stop the forestry operation from  
6 taking place.

7 (d) Any forestry operations on state land or any land owned by the cities and towns in  
8 Rhode Island before the natural heritage preservation commission is notified about the forestry  
9 operation or during the two (2) month period that the natural heritage preservation commission has  
10 a chance to survey the site where the forestry operation is scheduled to take place is strictly  
11 prohibited.

12 (e) Any forestry operations funded by the state or the cities and towns in Rhode Island on  
13 private land before the natural heritage preservation commission is notified about the forestry  
14 operation, or during the two (2) month period that the natural heritage preservation commission has  
15 a chance to survey the site where the forestry operation is scheduled to take place, or after the site  
16 is determined by the natural heritage preservation commission to contain an old growth forest or  
17 rare forest ecosystem is strictly prohibited.

18 (f) Whenever any land is acquired by the state or any of its cities and towns, a survey shall  
19 be conducted by the natural heritage preservation commission to identify the presence of any old  
20 growth forests or rare forest ecosystems. No forestry operation shall be conducted until completion  
21 of the survey pursuant to the provision in this section.

22 (g) Any forestry operations in the natural area preserves are strictly prohibited.

23 **42-122-9. Penalty for violations of § 42-122-8.**

24 (a) Any person, firm or corporation violating the provisions of § 42-122-8, shall be  
25 punished by a fine of not less than five thousand dollars (\$5,000) for each offense.

26 (b) The natural heritage preservation commission has the authority to order anyone  
27 convicted of violating § 42-122-8, or any governmental entity which the natural heritage  
28 preservation commission determines violated § 42-122-8 to donate no less than three thousand  
29 dollars (\$3,000) to the natural heritage preservation revolving fund pursuant to § 42-17.5-3.

30 SECTION 6. Title 2 of the General Laws entitled "AGRICULTURE AND FORESTRY"  
31 is hereby amended by adding thereto the following chapter:

32 CHAPTER 28

33 NATURAL HERITAGE PRESERVATION COMMISSION

34 **2-28-1. Natural heritage preservation commission.**



1           No powers or duties granted in title 2, entitled "Agriculture and Forestry" herein shall be  
2 construed to abrogate the powers or duties granted to the natural heritage preservation commission  
3 under chapter 17.5 of title 42 and chapter 122 of title 42, as amended.

4           SECTION 7. This act shall take effect upon passage.

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LC005679/SUB A  
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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF

A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT -- DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

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1           This act would amend the composition of the natural heritage preservation commission and  
2 would separate the commission from the control of the department of environmental management  
3 and would further provide that the commission be responsible for the preservation and management  
4 of the state's natural area preserves.

5           This act would take effect upon passage.

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LC005679/SUB A  
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