

# CHAPTER 46-28

## The Rhode Island Rivers Council

### Index of Sections

- **§ 46-28-1 Short title.**

This chapter shall be known and may be cited as "The Rhode Island Rivers Council".

History of Section.

(P.L. 1991, ch. 198, § 1.)

- **§ 46-28-2 Legislative findings and declaration of public policy.**

(a) Rhode Island needs an affirmative, clearly articulated program to plan for, manage and protect its rivers and watershed resources on an integrated, inter-agency basis, that supports systems level planning.

- (b) Many of the rivers of Rhode Island or sections thereof and related adjacent land possess outstanding aesthetic and recreational value of present and potential benefit to the citizens of this state. The preservation and protection of these rivers and their immediate environment together with their significant recreational, natural and cultural value is hereby declared to be a public policy. It shall be the policy of the state of Rhode Island to protect these values and to practice sound conservation policies and practices relative thereto. It is also recognized that it is in the public interest to:

- (1) Preserve open space, natural resources and features, and scenic landscapes;
- (2) Preserve cultural and historic landscapes and features;
- (3) Preserve opportunities for recreational use of rivers;
- (4) Encourage the establishment of greenways which link open spaces together;
- (5) Establish a rivers policy consistent with the Rhode Island Comprehensive Planning and Land Use Regulation Act, chapter 22.2 of title 45 as set forth in § 45-22.2-3(c);
- (6) Continue the regional and comprehensive planning activities for rivers, water quality, and land use conducted by the Rhode Island department of environmental management and the Rhode Island department of administration; and
- (7) Utilize the rivers policy and classification plan and other relevant elements of the state guide plan, plans and programs of state and federal agencies, and

watershed action plans to coordinate the activities of the public and private sectors so as to achieve the objectives of this section.

- (c) It is, therefore, essential that a Rhode Island policy be developed so that these purposes may be fulfilled. The general assembly affirms that it must assure the people of this generation and their descendants the opportunity to appreciate aesthetic and utilize the recreational qualities and resources of the state's streams and rivers. To implement these policies is the purpose of this chapter and in furtherance thereof to establish the Rhode Island rivers council which will coordinate and oversee the clean up and preservation of the quality of rivers in Rhode Island.

History of Section.

(P.L. 1991, ch. 198, § 1; P.L. 2004, ch. 159, § 4; P.L. 2004, ch. 254, § 4.)

### **§ 46-28-3 Definitions.**

As used in this chapter, the following words and terms shall have the following meanings unless the context shall indicate another or different meaning:

- (1) "Council" means the Rhode Island rivers council.
- (2) "River" means a flowing body of water or estuary or a section, portion, or tributary thereof, including streams, creeks, brooks, ponds, and small lakes.
- (3) "Watershed" means a land area which because of its topography, soil type, and drainage patterns acts as a collector of raw waters which regorge or replenish rivers and existing or planned public water supplies.

History of Section.

(P.L. 1991, ch. 198, § 1.)

### **§ 46-28-4 Establishment of council – Purpose.**

(a) There is hereby authorized, created, and established within the executive department as an associated function, as defined in § 46-28-10, of the water resources board, established pursuant to chapters 15 and 15.1 of this title, a Rhode Island rivers council known as "the Rhode Island rivers council," with such powers as are set forth in this chapter, for the purposes of coordinating, overseeing, and reviewing efforts to improve and preserve the quality of rivers and to develop plans to increase the

utilization of river areas throughout the state, and to support and strengthen grassroots watershed organizations as local implementers of the plans.

(b) The rivers policy and classification plan prepared and recommended as provided for in § 46-28-7(3) and as adopted by the state planning council shall be the principal means of management and protection by the rivers council. The rivers council shall work in conjunction with watershed councils and all affected federal, regional and state agencies, including, but not limited to, the Rhode Island bays, rivers and watersheds coordination team, the water resources board, the coastal resources management council, the department of environmental management, the department of health, the statewide planning program of the department of administration, and the economic development corporation, municipal governments, private organizations and persons in achieving the purposes set forth in this section, and implementing systems level planning for the state.

#### History of Section.

(P.L. 1991, ch. 198, § 1; P.L. 2004, ch. 159, § 4; P.L. 2004, ch. 254, § 4; P.L. 2006, ch. 22, § 8; P.L. 2006, ch. 27, § 8; P.L. 2007, ch. 340, § 62.)

#### **§ 46-28-5 Council created – Appointment of members.**

Such council shall consist of fifteen (15) members to be appointed in the following manner:

- (1) Nine (9) public members shall be appointed by the governor, with the advice and consent of the senate; one of whom shall be a member of a chamber of commerce within Rhode Island, three (3) of whom shall be people who have experience with relevant not-for-profit groups such as local land trusts or conservation commissions, two (2) of whom shall have experience in environmental law, environmental science or planning, and one of whom shall have experience in communication, public outreach or education; one member shall be the general manager of the water resources board or his or her designee who shall be a subordinate within the water resources board who shall serve as a nonvoting ex officio member; one member shall be the director of the department of environmental management or his or her designee who shall be a subordinate within the department of environmental management; one member shall be the executive director of coastal resources management council or his or her designee who shall be a subordinate within the coastal resources management council who shall serve as a nonvoting ex officio member; one member shall be the director of the department of administration or his or her

designee who shall be a subordinate within the department of administration; one member shall be the executive director of the economic development corporation or his or her designee who shall be a subordinate within the economic development corporation who shall serve as a nonvoting ex officio member; and one member shall be the president of the Rhode Island League of Cities and Towns or his or her designee who shall serve as a nonvoting ex officio member.

- (2) All duly appointed members as of the passage of this act [April 20, 2006], shall continue as members until the expiration of their term. Upon expiration of the terms of members of the council who were appointed by the governor or the lieutenant governor prior to the effective date of this act [April 20, 2006], new members shall be appointed by the governor as prescribed in subdivision (1). Members shall be appointed during the month of January of each year by the governor and in the event of a vacancy occurring in the council, said vacancy shall be filled in a like manner as the original appointment for the remainder of the unexpired term. Members shall serve until their successors are appointed and qualified. The term of appointed members shall be three (3) years. The members of the council shall be eligible to succeed themselves. The members of the council shall serve without compensation. No one shall be eligible for appointment unless he or she is a resident of this state.

History of Section.

(P.L. 1991, ch. 198, § 1; P.L. 2001, ch. 180, § 157; P.L. 2004, ch. 159, § 4; P.L. 2004, ch. 254, § 4; P.L. 2006, ch. 22, § 8; P.L. 2006, ch. 27, § 8.)

#### **§ 46-28-5.1 Removal of members.**

Members of the council shall be removable by the governor pursuant to § 36-1-7 of the general laws and for cause only, and removal solely for partisan or personal reasons unrelated to capacity or fitness for the office shall be unlawful.

History of Section.

(P.L. 2006, ch. 22, § 9; P.L. 2006, ch. 27, § 9.)

#### **§ 46-28-6 Officers of the council and quorum.**

Upon the passage of this act [April 20, 2006], the council shall elect from among the members a chair and a vice-chair. Thereafter, the council shall annually elect in February a chair and vice-chair from among the members. The council may elect from among its members such other officers as they deem necessary. Six (6) voting members of the council shall constitute a quorum. A majority vote of those present

and voting shall be required for action.

History of Section.

(P.L. 1991, ch. 198, § 1; P.L. 1992, ch. 148, § 1; P.L. 2006, ch. 22, § 8; P.L. 2006, ch. 27, § 8.)

### **§ 46-28-7 Powers and duties.**

The council shall have the following powers:

- (1) To be entitled to ask for and receive from any commission, board, officer, or agency of the state such information, cooperation, assistance, and advice as shall be reasonable and proper in view of the nature of said functions;
- (2) To assess, evaluate and coordinate with federal, regional and state agencies the current programs and policies as they relate to efforts to clean up and preserve rivers and watersheds throughout the state; and to participate in coordination mechanisms to achieve systems level planning for the state;
- (3) To prepare and recommend a rivers policy for the state of Rhode Island for adoption by the state planning council as a part of the state guide plan as described in § 42-11-10(c)(7), as amended, following the procedures for notification and public hearing set forth in § 42-35-3, as amended. Said policy shall be consistent with federal water quality requirements and shall give consideration to development, public or private, which has commenced at the time of the adoption of a rivers policy. Such rivers policy shall treat rivers as ecological systems;
- (4) To prepare and recommend a plan for the classification of all rivers in the state of Rhode Island for adoption by the state planning council as a part of the state guide plan, following the procedures for notification and public hearing set forth in § 42-35-3, as amended. The classifications shall identify characteristics of water bodies beyond their quality to reflect their current or potential uses for drinking water sources, agricultural irrigation, industrial processes, including cooling water sources, water-based recreation, aquatic habitat, aesthetic enhancement, and others. The classification plan shall be consistent with current water quality classifications adopted by the department of environmental management. Such classification plan shall contain a minimum of three (3) classes of rivers, including:
  - (A) *Pristine rivers*. Those rivers or sections of rivers that are free of impoundments and generally inaccessible except by trail, with watersheds or shorelines essentially primitive and water relatively unpolluted;
  - (B) *Recreational rivers*. Those rivers or sections of rivers that are readily accessible, that may have some development along their shorelines and may have undergone some impoundment or diversion in the past. These shall

include sections of rivers along mill villages, but shall not include sections where development may be characterized as urban; and

- (C) *Working rivers*. Those rivers or sections of rivers that are readily accessible, that have development along their shorelines, that have undergone impoundment or diversion, and where development may be classified as urban.
- In the classification of rivers, different sections of a single river may enjoy different classifications as appropriate.
- (5) To make findings and recommendations among state agencies and political subdivisions by participating in administrative proceedings and by reporting to the governor regarding disputes and conflicts on river and watershed issues;
- (6) To make findings and recommendations to state agencies and political subdivisions regarding measures necessary to protect river quality and to promote river uses consistent with the state's river policy and river classification plan;
- (7) To formally recognize and to provide grants to local watershed councils;
- (8) To foster public involvement in river planning and decision-making processes by:
  - (i) Conducting public education programs about rivers and watersheds;
  - (ii) Promoting public access to and use of rivers, as appropriate;
  - (iii) Holding informal workshops prior to the adoption of:
    - (A) The state's rivers policy;
    - (B) The state's river classification plan or any portion thereof as provided for in subsection (d) of this section; and
    - (C) The establishment of any local watershed council; and
  - (iv) Providing technical assistance to local watershed councils to participate in watershed planning.
- (9) To recommend programs, policies and proposals to the governor, the speaker of the house and the president of the senate;
- (10) Establish subcommittees as may be needed to carry out the purpose of this chapter;
- (11) To promulgate regulations and procedures as may be needed to issue grants and approve watershed action plans, including rules requiring notice by state or city and town agencies to local watershed councils regarding proposed actions pertaining to projects, developments and activities located wholly or partially within the watershed represented by the local watershed council;
- (12) To apply for and accept grants, donations, loans of funds, and contributions of money, services, materials or otherwise from any federal, state or local agency, from any public or private foundation, or individual or from any other source, in order to carry out the purposes of this chapter; and
- (13) To conduct a training course for newly appointed and qualified members of the council and new designees of ex officio members within six (6) months

of their qualification or designation. The course shall be developed by the chair of the council, approved by the council and conducted by the chair of the council. The council may approve the use of any council or staff members or other individuals to assist with training. The course shall include instruction in the following areas: the provisions of chapters 46-28, 42-46, 36-14 and 38-2; and the council's operating procedures, rules and regulations. The director of the department of administration shall, within ninety (90) days of the effective date of this act [April 20, 2006], prepare and disseminate training materials relating to the provisions of chapters 42-46, 36-14 and 38-2.

History of Section.

(P.L. 1991, ch. 198, § 1; P.L. 1992, ch. 148, § 1; P.L. 2004, ch. 159, § 4; P.L. 2004, ch. 254, § 4; P.L. 2006, ch. 22, § 8; P.L. 2006, ch. 27, § 8.)

#### **§ 46-28-7.1 Power and duties of the state planning council.**

In order to carry out the purposes of this chapter, the state planning council shall adopt a rivers policy and a classification plan for the state of Rhode Island as elements of the state guide plan in accordance with the provisions of § 42-11-10. The procedure for adoption shall be as follows: Upon notification from the rivers council that it has completed preparation of the rivers policy or classification plan as set forth in § 46-28-7(c) and (d), respectively, the state planning council and rivers council shall jointly conduct a public hearing in the manner specified in chapter 35 of title 42. Following the public hearing, the rivers council shall, in consultation with the statewide planning program, make its recommendation to the state planning council. The state planning council may make any revisions or amendments to the rivers policy or classification plan as recommended by the rivers council that are necessary to carry out the purposes of this chapter, to achieve consistency with applicable provisions of law, or to consider comments made at the public hearing.

History of Section.

(P.L. 1992, ch. 148, § 2; P.L. 2004, ch. 159, § 4; P.L. 2004, ch. 254, § 4.)

#### **§ 46-28-8 Local watershed councils.**

(a) The rivers council shall establish and recognize local watershed councils to implement the rivers policy as adopted in accordance with the provisions of this chapter and set forth in the state guide plan. Unless a watershed is solely within one municipality's boundaries, each local watershed council shall be comprised of members from each municipality within the watershed area as designated by the

department of environmental management. Such local watershed councils may be existing organizations where appropriate.

- (b) Local watershed councils shall have standing to present testimony in all state and local administrative proceedings which impact on rivers and water quality and shall receive notice, pursuant to rules adopted by the council, from state or city and town agencies regarding proposed actions pertaining to projects, developments and activities located wholly or partially within the watershed represented by the local watershed council.
- (c) Each local watershed council shall be a body corporate and politic, having a distinct legal existence from the state and any municipality within the watershed area in which such local watershed council is located. Each local watershed council shall have power:
  - (1) To advise and make recommendations for the watershed in the municipality where such watershed is located for the preparation or revision by the municipality of its comprehensive land use plan pursuant to the Rhode Island Comprehensive Planning and Land Use Regulation Act with regard to achieving and maintaining classifications assigned by the rivers council;
  - (2) To advise the municipalities with regard to public access to rivers for the preparation or revision by the municipality of a comprehensive land use plan pursuant to the Rhode Island Comprehensive Planning and Land Use Regulation Act;
  - (3) To establish and support river watch programs for the protection of the watershed in which it is located;
  - (4) To negotiate payments between two (2) or more of the municipalities within the watershed for the conduct of services or the erection of projects necessary for the purposes of the local watershed council, subject to majority vote of each of the city and town councils participating in each program or project;
  - (5) To acquire, hold, use, lease, sell, transfer, and dispose of any property, real, personal, or mixed, or interest or interests thereon;
  - (6) To own, operate, maintain, repair, improve, enlarge, and extend, in accordance with the provisions of this chapter, any property acquired hereunder, all of which, together with the acquisition of such property, are hereby declared to be public purposes; and
  - (7) To sell, lease, convey, or otherwise dispose of to any of the municipalities within the watershed any property or improvements thereto, which the local watershed council may hereafter acquire or construct; provided, however, that any sale, lease, conveyance, or other disposition of the property shall not prejudice or adversely affect any service which the local watershed council is providing to any other participating city or town;

- (8) To sue and be sued in connection with any contracts made by, real estate or personal property owned by or leases or conveyances made by the local watershed council;
- (9) To adopt and order a corporate seal;
- (10) To make bylaws for the management and regulation of its affairs;
- (11) To borrow money for any of its corporate purposes including the creation and maintenance of working capital;
- (12) To fix rates and collect charges for the use of the facilities of or services rendered by or any commodities furnished by the local watershed council; and to pay as the same shall become due the expenses of operating and maintaining the properties of the river watershed council;
- (13) To contract in its own name for any lawful purpose which would effectuate the purposes of this chapter; to execute all the instruments necessary to carry out the purposes of this chapter; to do all things necessary or convenient to carry out the powers expressly granted by this chapter. It is the intention of the legislature that any property acquired by the local watershed councils pursuant to the provisions of this chapter shall be financed as a self-liquidating enterprise, and that any indebtedness incurred by the local watershed councils shall be payable solely from the earnings or revenues derived from all or part of the property acquired by such river watershed council. Any indebtedness incurred by the local watershed councils shall not be deemed to constitute a debt or a pledge of the faith and credit of the state or of any municipality;
- (14) To enter into cooperative agreements with other cities and towns, for any lawful corporate purposes necessary and desirable to effect the purposes of this chapter;
- (15) In the performance of its functions the local watershed council may recommend to municipalities land and water conservation programs consistent with the state rivers policy provided for in § 46-28-7;
- (16) To apply for, contract for, and expend any federal or state advances or grants or assistance which may be made available for purposes of this chapter.

History of Section.

(P.L. 1991, ch. 198, § 1; P.L. 2004, ch. 159, § 4; P.L. 2004, ch. 254, § 4; P.L. 2007, ch. 340, § 62.)

### **§ 46-28-9 Annual council report and special reports.**

(a) *Annual report.* The council shall make an annual report to the governor and the

general assembly on or before February 1 of each year. The report shall include a summary of the activities of the council and of each designated local watershed council and a consolidated financial statement of all funds received by and expended by the rivers council during the reporting period.

(1) Within ninety (90) days after the end of each fiscal year, the council shall approve and submit an annual report to the governor, the speaker of the house of representatives, the president of the senate, and the secretary of state of its activities during that fiscal year. The report shall provide: an operating statement summarizing meetings or hearings held, including meeting minutes, subjects addressed, decisions rendered, rules or regulations promulgated, studies conducted, policies and plans developed, approved, or modified, and programs administered or initiated; a summary of the activities of each designated local watershed; a consolidated financial statement of all funds received and expended including the source of the funds, a listing of any staff supported by these funds, and a summary of any clerical, administrative or technical support received; a summary of performance during the previous fiscal year including accomplishments, shortcomings and remedies; a synopsis of hearings, complaints, suspensions or other legal matters related to the authority of the council; a summary of any training courses held pursuant to subsection 46-28-7(13); a briefing on anticipated activities in the upcoming fiscal year; findings and recommendations for improvements; and a summary of progress made by the council in the implementation of the system-level plan as described in § 46-31-5.

(2) The report shall be posted electronically as prescribed in § 42-20-8.2. The director of the department of administration shall be responsible for the enforcement of this provision.

*(b) Special reports.* The council shall prepare such special reports as may be requested by the general assembly, or either branch thereof, the governor, or as may be determined by the council.

History of Section.

(P.L. 1991, ch. 198, § 1; P.L. 2004, ch. 159, § 4; P.L. 2004, ch. 254, § 4; P.L. 2006, ch. 22, § 8; P.L. 2006, ch. 27, § 8; P.L. 2007, ch. 340, § 62.)

#### **§ 46-28-10 Administrative support and staffing.**

The water resources board shall be responsible for providing administrative support in carrying out the responsibilities charged to the Rhode Island rivers council; the water resources board, the department of environmental management, and the statewide

planning program shall, as appropriate, provide the Rhode Island rivers council staff support as necessary to accomplish the purposes of this chapter.

History of Section.

(P.L. 1991, ch. 198, § 1; P.L. 2004, ch. 159, § 4; P.L. 2004, ch. 254, § 4.)

**§ 46-28-11 Liberal construction.**

The provisions of this chapter shall be construed liberally in order to accomplish the purposes hereof, and where any specific power is given to the council by the provisions hereof, the statement thereof shall not be deemed to exclude or impair any power otherwise in this chapter conferred upon said council.

History of Section.

(P.L. 1991, ch. 198, § 1.)

**§ 46-28-12 Powers of coastal resources management council.**

Nothing contained herein shall abrogate or affect the powers of the coastal resources management council.

History of Section.

(P.L. 1991, ch. 198, § 1.)

**§ 46-28-13 Chapter does not abrogate or affect § 2-23-5.**

Nothing contained herein shall abrogate or affect the provisions outlined in § 2-23-5.

History of Section.

(P.L. 1991, ch. 198, § 1.)