

2011 -- S 0048

LC00051

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2011

A N A C T

RELATING TO AGRICULTURE AND FORESTRY -- FRESH WATER WETLANDS

Introduced By: Senators Walaska, Lynch, and McCaffrey

Date Introduced: January 19, 2011

Referred To: Senate Environment & Agriculture

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 2-1-21 and 2-1-22 of the General Laws in Chapter 2-1 entitled  
2 "Agricultural Functions of Department of Environmental Management" are hereby amended to  
3 read as follows:

4 **2-1-21. Approval of director.** -- (a) (1) No person, firm, industry, company, corporation,  
5 city, town, municipal or state agency, fire district, club, nonprofit agency, or other individual or  
6 group may excavate; drain; fill; place trash, garbage, sewage, highway runoff, drainage ditch  
7 effluents, earth, rock, borrow, gravel, sand, clay, peat, or other materials or effluents upon; divert  
8 water flows into or out of; dike; dam; divert; change; add to or take from or otherwise alter the  
9 character of any fresh water wetland as defined in section 2-1-20 without first obtaining the  
10 approval of the director of the department of environmental management.

11 (2) Approval will be denied if in the opinion of the director granting of approval would  
12 not be in the best public interest. Approval shall not be granted if the city council or town council  
13 of the municipality within whose borders the project lies disapproves within the forty-five (45)  
14 days provided for objections set forth in section 2-1-22. The director shall provide the city council  
15 or town council with notice by forwarding the original petition and maps, by electronic, certified  
16 and regular mail, to the city or town clerk and the city or town director of planning and  
17 development. Disapproval does not preclude the director of the department of environmental  
18 management from granting an approval of alterations of wetlands relating to a state highway  
19 project proposed by the department of transportation that passes through or crosses two (2) or

1 more municipalities.

2 (3) Appeal from a denial may be made to the superior court.

3 (4) In the event of any alteration by a city or town of surface water impoundments used  
4 for drinking water supply, limited to maintenance within existing boundary perimeters of the  
5 impoundment, no approval shall be required. The city or town advises the director at least twenty  
6 (20) days prior to commencing the maintenance work. The city or town shall advise the director  
7 in writing, describing the location and nature of the work, anticipated times of commencement  
8 and completion, and methods to be used to reduce adverse impacts on the wetland. The director  
9 shall advise the city or town of any concerns with the impact of the proposed maintenance on the  
10 wetland and water quality.

11 (b) Whenever a landowner is denied approval to alter a wetland by the director, or by the  
12 city or town within whose borders the wetland lies under subsection (a), the landowner may elect  
13 to have the state, or the city or town, acquire the land involved by petitioning to the superior  
14 court. If the court determines that the proposed alteration would not essentially change the natural  
15 character of the land, would not be unsuited to the land in the natural state, and would not injure  
16 the rights of others, the court shall, upon determining the fair market value of the wetland, based  
17 upon its value as a wetland, direct the state, if approval was denied by the director, or the city or  
18 town, if approval was denied by the city or town, or both, if they concur in the disapproval, to pay  
19 to the landowner the fair market value of the wetland. If the state, or the city or town, or both,  
20 where both are ordered to pay, declines the acquisition, the landowner may proceed to alter the  
21 wetland as initially requested. Any amount paid by the state shall be paid from any funds in the  
22 treasury not otherwise appropriated. If the director of environmental management alone denied  
23 approval under subsection (a), then the state shall make payment. If the city or town alone denied  
24 approval under subsection (a), then the city or town shall make payment. If both the state and the  
25 city or town denied approval, then payment shall be shared equally by the state and the city or  
26 town.

27 **2-1-22. Procedure for approval by director -- Notice of change of ownership --**  
28 **Recordation of permit.** -- (a) Application for approval of a project to the director of  
29 environmental management shall be made in a form to be prescribed by the director and provided  
30 by the director upon request. Prior to the application, a request may be made for preliminary  
31 determination as to whether this chapter applies. A preliminary determination shall be made by  
32 the director only after an on-site review of the project and the determination shall be made within  
33 thirty (30) days of the request. This chapter shall be determined to apply if a significant alteration  
34 appears to be contemplated and an application to alter a wetland will be required. Within fourteen

1 (14) days after receipt of the completed application accompanied by plans and drawings of the  
2 proposed project, the plans and drawings to be prepared by the registered professional engineer to  
3 a scale of not less than one inch (1") to one hundred feet (100'), the director shall notify all  
4 landowners whose properties are within two hundred feet (200') of the proposed project and the  
5 director will also notify the city or town council, the conservation commission, the planning  
6 board, the zoning board, and any other individuals and agencies in any city or town within whose  
7 borders the project lies who may have reason in the opinion of the director to be concerned with  
8 the proposal. The director may also establish a mailing list of all interested persons and agencies  
9 who may wish to be notified of all applications.

10 (b) If the director receives any objection to the project within forty-five (45) days of ~~the~~  
11 ~~mailing~~ receipt of the notice of application from his or her office, the objection to be in writing  
12 and of a substantive nature, the director shall then schedule a public hearing in an appropriate  
13 place as convenient as reasonably possible to the site of the proposed project. The director shall  
14 inform by registered mail all objectors of the date, time, place, and subject of the hearing to be  
15 held. The director shall further publish notice of the time, place, date, and subject of the hearing  
16 in one local newspaper circulated in the area of the project and one statewide newspaper, the  
17 notices to appear once per week for at least two (2) consecutive weeks prior to the week during  
18 which the hearing is scheduled. The director shall establish a reasonable fee to cover the costs of  
19 the investigations, notifications, and publications, and hearing and the applicant shall be liable for  
20 the fee.

21 (c) If no public hearing is required, or following a public hearing, the director shall make  
22 his or her decision on the application and notify the applicant by registered mail and the  
23 applicant's attorney and any other agent or representative of the applicant by mail of this decision  
24 within a period of six (6) weeks. If a public hearing was held, any persons who objected, in  
25 writing, during the forty-five (45) day period provided for objections shall be notified of the  
26 director's decision by first class mail.

27 (d) In the event of a decision in favor of granting an application, the director shall issue a  
28 permit for the applicant to proceed with the project, and shall require the applicant to pay a permit  
29 fee of one hundred dollars (\$100). The permit may be issued upon any terms and conditions,  
30 including time for completion, that the director may require. Permits shall be valid for a period of  
31 one year from the date of issue and shall expire at the end of that time unless renewed. A permit  
32 may be renewed for up to three (3) additional one year periods upon application by the original  
33 permit holder or a subsequent transferee of the property subject to permit, unless the original  
34 permit holder or transferee has failed to abide by the terms and conditions of the original permit

1 or any prior renewal. The director may require new hearings if, in his or her judgment, the  
2 original intent of the permit is altered or extended by the renewal application or if the applicant  
3 has failed to abide by the terms of the original permit in any way. In addition, in the event a  
4 project authorized by a permit was not implemented by the permit holder or transferee because  
5 approval of the project by a federal agency, for which application had been timely made, had not  
6 been received or a federal agency had stopped the project from proceeding, prior to the expiration  
7 of the permit, the permit holder or transferee may apply for a renewal of the permit at any time  
8 prior to the tenth (10th) anniversary of the original issuance, and the application shall be deemed  
9 to be an insignificant alteration subject to expedited treatment. The request for renewal of a  
10 permit shall be made according to any procedures and form that the director may require.

11 (e) The original permittee or subsequent transferee shall notify the director, in writing, of  
12 any change of ownership that occurs while an original or renewal permit is in effect by  
13 forwarding a certified copy of the deed of transfer of the property subject to the permit to the  
14 director.

15 (f) A notice of permit and a notice of completion of work subject to permit shall be  
16 eligible for recordation under chapter 13 of title 34 and shall be recorded at the expense of the  
17 applicant in the land evidence records of the city or town where the property subject to permit is  
18 located, and any subsequent transferee of the property shall be responsible for complying with the  
19 terms and conditions of the permit.

20 (g) The director shall notify the person requesting a preliminary determination and the  
21 person's attorney, agent, and other representative of his or her decision by letter, copies of which  
22 shall be sent by mail to the city or town clerk, the zoning board, the planning board, the building  
23 official, and the conservation commission in the city or town within which the project lies.

24 (h) The director shall report to the general assembly on or before February 1 of each  
25 calendar year on his or her compliance with the time provisions contained in this chapter.

26 (i) Normal farming activities shall be considered insignificant alterations and, as normal  
27 farming activities, shall be exempted from the provisions of this chapter in accordance with the  
28 following procedures:

29 (1) Normal farming and ranching activities are those carried out by farmers as defined in  
30 this title, including plowing, seeding, cultivating, land clearing for routine agriculture purposes,  
31 harvesting of agricultural products, pumping of existing farm ponds for agricultural purposes,  
32 upland soil and water conservation practices, and maintenance of existing farm drainage  
33 structures, existing farm ponds and existing farm roads are permissible at the discretion of  
34 farmers in accordance with best farm management practices which assure that the adverse effects

1 to the flow and circulation patterns and chemical and biological characteristics of fresh water  
2 wetlands are minimized and that any adverse effects on the aquatic environment are minimized.

3 (2) In the case of construction of new farm ponds, construction of new drainage  
4 structures and construction of new farm roads, the division of agriculture shall be notified by the  
5 filing of a written application for the proposed construction by the property owner. The  
6 application shall include a description of the proposed construction and the date upon which  
7 construction is scheduled to begin, which date shall be no earlier than thirty (30) calendar days  
8 after the date of the filing of the application. The division of agriculture shall review such  
9 applications to determine that they are submitted for agricultural purposes and to assure that  
10 adverse effects to the flow and circulation patterns and chemical and biological characteristics of  
11 fresh water wetlands are minimized and that any adverse effects on the aquatic environment are  
12 minimized and will not result in a significant alteration to the wetlands. Pursuant to this review,  
13 the division shall notify the applicant, in writing, whether the proposal is an insignificant  
14 alteration. This notice shall be issued not later than thirty (30) days after the date that the  
15 application was filed with the division. In the event notice is given by the division as required, the  
16 application shall be conclusively presumed to be an insignificant alteration. If no notice is given  
17 as required, or if an application is approved as an insignificant alteration, the applicant may cause  
18 construction to be done in accordance with the application, and neither the applicant nor the  
19 applicant's agents or employees who cause or perform the construction in accordance with the  
20 application shall be liable for any criminal, civil, administrative or other fine, fee, or penalty,  
21 including restoration costs for violations alleged to arise from the construction.

22 (3) The division of agriculture shall, in coordination with the agricultural council's  
23 advisory committee, adopt regulations for subdivision (i)(2), and shall determine whether a  
24 proposed activity, other than an activity listed in subdivision (i)(1), constitutes a normal farming  
25 activity, or involves the best farm management practices.

26 (4) Except as otherwise provided for farm road construction, filling of wetlands  
27 conforms to the provisions of this chapter.

28 (j) For the purposes of this section, a "farmer" is an individual, partnership or  
29 corporation who operates a farm and has filed a 1040F U.S. Internal Revenue Form with the  
30 Internal Revenue Service, has a state farm tax number and has earned ten thousand dollars  
31 (\$10,000) gross income on farm products in each of the preceding four (4) years.

32 SECTION 2. This act shall take effect upon passage.

EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO AGRICULTURE AND FORESTRY -- FRESH WATER WETLANDS

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- 1           This act would require that cities and towns be notified of applications to alter fresh water
- 2 wetlands by electronic, certified and regular mail and would extend the time for filing objections
- 3 to forty-five (45) days from receipt of the notice.
- 4           This act would take effect upon passage.

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