

Testimony of Common Cause Rhode Island on H 8344 -- An Act Relating to State Affairs and Government -- Public-Private Partnership Infrastructure Program

Position: Amend

Common Cause Rhode Island recommends that H 8344 be amended to bring it into compliance with the Rhode Island Constitution's Separation of Powers, including the Appointments Clause in Article IX, Section 5.

H 8344 creates a seven-member commission with the power to, among other things, engage in contracts. All seven members are appointed by the governor with certain professional and geographic qualifications. However, the bill does not make the appointments subject to the advice and consent of the senate. We believe the bill should be amended to bring it into compliance with, Article IX, Section 5, that reads, in part:

“The governor shall, by and *with the advice and consent of the senate*, appoint all officers of the state whose appointment is not herein otherwise provided for and all members of any board, commission or other state or quasi-public entity which exercises executive power under the laws of this state.” [Emphasis added]

This section of our constitution, along with three others, was amended in 2004. Prior to that members of the legislature both served on executive boards and commissions and made appointments to boards and commissions. In adopting the Separation of Powers amendments more than 78% of voters chose to end those practices.

This change to our constitution was affirmed in *In re: Request for an Advisory Opinion of the House of Representatives (Coastal Resources Management Council) (2007)* when the Rhode Island Supreme Court made clear that executive boards and agencies, of which the Board of Education is one, are subject to the Separations of Powers generally, and the Appointments Clause, specifically.

A casual reading of the legislation demonstrates that the new Public-Private Infrastructure Oversight Commission is an executive commission because it performs many executive functions, not just oversight. Therefore we believe appointments to the commission fall under the separation of powers and should be subject to the advice and consent of the senate.