

BEFORE THE HOUSE COMMITTEE ON STATE GOVERNMENT AND ELECTIONS

HEARING ON H 5706, APRIL 8, 2025

TESTIMONY of BRADFORD WHITMAN

I am Bradford Whitman, a resident of Jamestown, a career environmental attorney, and a member of Save the Bay and Protect Conanicut Coastline. I have extensive experience with the state and federal environmental statutes, programs and enforcement in court. I have been personally involved in matters involving the Coastal Resources Management Council (CRMC) during the last four years.

Thank you for the opportunity to speak in support of H 5706, a bill to replace CRMC with an executive agency entitled the Department of Coastal Resources (DCR).

There can be no doubt at this point that there is a critical need to replace CRMC with a conventional executive department. I am attaching my recent testimony before the Senate Committee on this point.

The question is whether to adopt H 5706 or H 5453, the former establishing an independent DCR and the latter establishing a new division in the Rhode Island Department of Environmental Management.

Here are the reasons I strongly urge this Committee to choose H 5706.

1. Save the Bay is Rhode Island's pre-eminent environmental organization. It has an excellent new Advocacy Director who has gone through the bills section by section and has presented in writing compelling reasons for adopting H 5706. Attorney General Peter Neronha and his staff have been deeply involved in a three-year effort to reform CRMC, first by admonishment of the Council for gross legal misconduct and later, when that failed, by working with Save the Bay and my organization, Protect Conanicut Coastline to draft 5706. I have examined

closely both bills, and with the exception of a few proposed amendments, I believe H 5706 will reliably prevent the failures and misconduct of the past and will elevate coastal resource protection to the high level that Rhode Island's extraordinary Narragansett Bay must have.

2. It is an understatement to say that, more than at any time in my life, we need the best *state* environmental protection agencies possible. Having a stand-alone DCR will increase visibility and public and political support for all coastal resources, and it will send a signal that no misconduct will be tolerated—and that if such conduct did arise, it will be crushed by a vigilant, dedicated state agency working together with both RIDEM and the Attorney General. The sure and certain consequences of violation will outweigh illicit gain. Even to this day, the 600-foot massive, illegal Quidnessett seawall stands on a sandy shoreline of the Bay in Type 1 waters, and not one ounce of enforcement has occurred. (See Attachment.) We must act and be perceived to act with the greatest seriousness and intent.
3. The Coastal Zone Management Program is complex and different from the majority of RIDEM programs, such as the NPDES effluent discharge program. I am not saying that RIDEM could not expand to perform these tasks, but that there are strong reasons why the U.S. Congress chose not to amend the Clean Water Act, but to establish a new statute and program, the Coastal Zone Management Program with a particular mission to protect coastal resources.
4. I have the following proposed amendments to H 5706.

I propose an insertion in Section 46-23-2(a) following "There is hereby established..." to read as follows: "The Department, its Director and staff shall implement the policy mandate and guiding principles stated in RI. Gen. Laws 46-23-1(a)(1) and (2)." Throughout the long series of CRMC offenses and failures that are well-publicized and well known from hearings and testimony, the federal and state laws *already contained a very clearly expressed policy mandate and "guiding principles"*—and yet members of the Council and staff repeatedly ignored them and denied them. I personally read all the hearing testimony in the JBY case. I found instances where CRMC personnel flatly denied the Council's

basic mission—and espoused a biased policy of promoting commercial marina activities above other uses. The Assembly must *direct* the DCR to implement the original mandate we the supporters of 5706 have so often quoted in these hearings.

5. In statutory drafting it is customary and right to capitalize formal names of all agencies and departments, as in “Department of Coastal Resources” and “Department”.
6. In Section 46-23-6 it is stated that all “prior actions (of CRMC) remain valid and enforceable by the department.” This could be construed as after-the-fact (*ex post facto*) legislation to approve illegal conduct, such as the Quidnessett seawall or the portions of the JBY case that the court has not yet addressed. To avoid creating a legal issue here I propose adding “except actions vacated by a court of competent jurisdiction or still subject to judicial review.”
7. Quidnessett Country Club obviously rolled the dice and decided to build its monstrous wall without a permit on the hunch that CRMC would do nothing and even if it did act, the consequences would be insignificant to a large, prosperous club. This brings us to the administrative penalty section of 5706, Section 46-23-7.1. A \$10,000 fine plus \$1,000 per day of continuing violation is in fact insignificant to such an enterprise. Years ago in all federal statutes it was legislated that the base fine of \$10,000 should continue on as the per-day rate until the violation is halted. There is no \$50,000 cap in any of these environmental statutes. The miscreants we are dealing with, for example at Dumplings Cove in Jamestown, are *billion-dollar enterprises*. To serve as a meaningful punishment and deterrent, the Assembly should raise the penalty to \$10,000 per day of continuing violation. Also, the penalty should run from the first day of violation, not receipt of a cease-and-desist order. When a person breaks the law, he is liable for a fine or other punishment as of that time.

This concludes my testimony.

Respectfully submitted,

Bradford Whitman