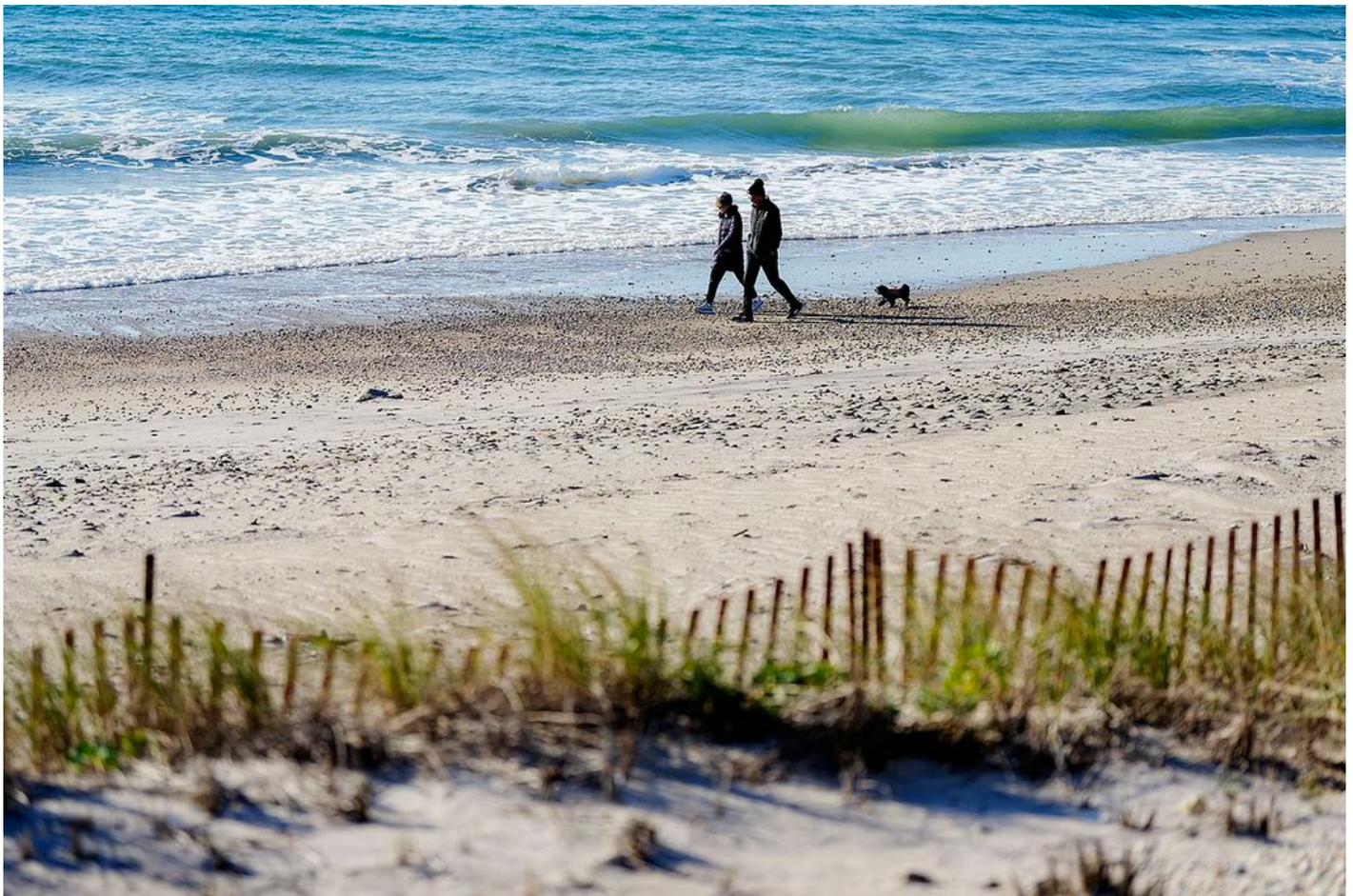


SHORE ACCESS

As R.I. House passes shore access bill again, eyes turn to Senate

The House bill sets the boundary at six feet landward of the seaweed line. The Senate bill would set the line where vegetation grows. Can the General Assembly agree on a way forward this session?

By **Brian Amaral** Globe Staff, Updated April 6, 2023, 5:15 p.m.



A couple and their dog walk along East Matunuck State Beach in South Kingstown. GLENN OSMUNDSON

PROVIDENCE — For the second year in a row, the Rhode Island House of Representatives on Thursday unanimously passed legislation addressing shore access, a

step forward on a still-uncertain path.

The legislation would set the boundary for people to exercise their constitutional right to access the shore in Rhode Island at six feet landward of the mark left by the water from a rising tide — in other words, six feet landward of the seaweed line or the wrack line. The way the law is often enforced now, critics say, is so limited that Rhode Islanders' constitutionally guaranteed rights to the shore are all but illusory.

“I'm glad this was a priority of the speaker,” said state Representative Terri Cortvriend, a Democrat of Portsmouth and the bill's main sponsor, referring to Speaker K. Joseph Shekarchi. “And I thank my colleagues for supporting the bill. I am hopeful that we will be able to provide clarity for fishermen and beachgoers alike during this legislative session.”

The vote was 62 in favor with none opposed, although two representatives, Westerly Democrat Samuel Azzinaro and West Warwick Republican Patricia Morgan, questioned whether the bill would give people the right to, say, set up on the shore in front of a private home for an entire day.

Cortvriend responded that the bill was silent on what people could actually do in the area the bill identifies, beyond pointing back to the Rhode Island Constitution, which gives people rights including — but not limited to — passage along the shore, fishing from the shore, leaving the shore to swim, and collecting seaweed.

“We're not creating a band of lawlessness,” Cortvriend said, addressing hypotheticals about things like beer parties. (Azzinaro and Morgan both ended up voting yes.)

To actually become law, though, the Senate would also need to pass the legislation, and the governor would need to sign it. And like last year, the Senate isn't taking up the House's proposal.

Instead, this year, the Senate is considering [its own version](#) of shore access legislation — one that would go even further than the House's. The Senate's would set the line at a point that would give the public the right to access virtually the entire beach, up to the line where vegetation grows.

That has led to an impasse, splitting opinion about passage along the shore among activists who are unanimous only in their dissatisfaction with the shoreline status quo: Do you go with Cortvriend's House version that's been vetted and already had significant support two years running? The Senate version that provides more real estate to the public but might arguably be more vulnerable to a legal challenge? Somewhere in the middle? And what sort of legislative horse trading will have to happen to make the always-complex inter-chamber politics between the House and Senate work?

Despite those questions, many are hopeful that something will pass at long last.

"I do feel optimistic," said [Topher Hamblett](#), the advocacy director of Save The Bay, which has made shore access a top legislative priority this year. "There's plenty of room for compromise."

But shore politics is never a sure thing. Scott Keeley, a Charlestown resident who settled a lawsuit over his arrest while collecting seaweed in South Kingstown in 2019, said opinions are divided on the best way forward. That lack of consensus potentially dilutes the force of activism. Keeley envisioned a protest under such circumstances:

"What do we want? I don't know! When do we want it? Depends on who you ask!"

Keeley said at face value, he'd be fine with either version, the House bill that passed Thursday and the Senate one that goes even further. But "it seems like it would have been much more expedient if the Senate just copied the House language. Maybe we'd be done by now."

But either way, the public is weary, Keeley said.

“This is something that has to be dealt with,” he said.

State Senator Mark McKenney, the Warwick Democrat who introduced the Senate’s version, said he came to believe that when the Rhode Island Constitution mentions the right to access the shore, it meant the shore — the whole thing. And other states set that boundary up at the vegetation line. Why should Rhode Island, the Ocean State, not do the same thing?

A committee hearing in the Senate will determine the path forward and which proposal actually has support, McKenney said. But he does believe some way forward will emerge between the House and Senate, somewhere between the private property owners who may think they own out to Block Island, and the beachgoers who may think they can stop in someone’s seaside home and grab a beer from the fridge.

“I’m confident we’ll get a bill we can agree to and we’ll get this issue resolved,” McKenney said.

Both bills, the one that passed Thursday and the one that’s been introduced in the Senate, would represent an expansion of Rhode Islanders’ shore access rights from how they’re currently — and controversially — enforced in Rhode Island: the mean high tide line.

The mean high tide line, which was set out in a Supreme Court decision in 1982 called *State v. Ibbison*, is not a visible line in the sand but a measurement taken over nearly 20 years of data. And it provides much less access than people think, according to experts and critics.

The House would establish a line for the public to access the shore at six feet landward of the recognizable high tide line, visible from things like the last throw of seaweed or the farthest reaches of wet sand.

Some supporters of the legislation say it's not actually an expansion of shore access rights at all, arguing it's more of a clarification or a solidification of shore access rights. They argue that when the state passed a new Constitution in 1986, it did away with the mean high tide line. That legal theory hasn't been tested in the Supreme Court, and the state courts have continued to cite the Ibbison decision and its controversial line, even after the constitutional changes. So have towns, state regulators, and private property owners.

But the legislation that the House passed Thursday formally adopts the theory that the 1986 Constitutional Convention rejected using the mean high tide line for the purposes of public access. After all, the state Constitution guarantees Rhode Islanders the right to do things like pass along the shore, leave the shore to swim, to fish, and to collect seaweed — how can you do that if the line is under water for most of the day?

The proposal came out of a [commission](#) set up by the House, which Cortvriend co-chaired with then-state Representative Blake Filippi. (Their proposal was originally 10 feet landward of the recognizable high tide line, which got knocked back to six feet in the House; some activists think 10 feet would be a good compromise between the House and Senate.)

One person who served on that commission was McKenney, who'd previously served in the state Senate. In November, he won his seat back.

This year, McKenney was an obvious candidate to take up the banner in the Senate. But he went a different direction: Instead of marking the line for public access at six feet from the recognizable high tide line, he proposed the vegetation line, much further up the beach. A majority of senators signed on as co-sponsors.

McKenney said Thursday that a committee hearing on the Senate's bill could happen in late April or early May. The legislative session generally wraps up in June.

While opinions vary among shore access advocates about which way to go, the view on the other side of the fence is pretty universal: Opponents say they're both bad and would both lead to lawsuits over unconstitutional "takings" without compensation.

In part because supporters don't consider it an expansion, though, supporters say the General Assembly can — and must — act.

But even if it doesn't, that's not going to stop people like Filippi, the former Republican lawmaker, from going to the shore.

"The failure of the General Assembly to protect this right doesn't mean it's nonexistent," Filippi said. "People really do have this right to access the shoreline. If the General Assembly doesn't act, I think people have an obligation to protect that right through action."

Brian Amaral can be reached at brian.amaral@globe.com. Follow him on Twitter [@bamaral44](https://twitter.com/bamaral44).

[Show comments](#)

©2023 Boston Globe Media Partners, LLC