

## POLITICS

# Lawmakers introduce long-awaited bill aimed at clarifying public's right to the shoreline



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The Providence Journal

Published 5:05 a.m. ET March 28, 2022

Long-awaited legislation aimed at clarifying the public's right to use the shoreline is here.

House Bill 8055 would establish that the public has the right to be 10 feet above the "recognizable high tide line" on any sandy or rocky shoreline. It was introduced by Rep. Terri Cortvriend, D-Middletown, and House Minority Leader Blake Filippi, R-Block Island, on Friday.

"This is not an expansion of shoreline access, but rather a restoration or preservation of constitutional shoreline access rights," said activist and surfer Conrad Ferla.

A secretive group known as Shoreline Taxpayers for Respectful Traverse, Environmental Responsibility and Safety, Inc., is prepared to argue the contrary, and warning of lawsuits if the bill is passed.

"I can say with some confidence that there are national groups that are watching this bill very closely," lobbyist Christopher Boyle told The Providence Journal. "We believe that if it was to be enacted, there'd be national involvement in litigation."

The bill is the product of a study commission chaired by Cortvriend and Filippi. Over the course of six months, commission members heard testimony from legal experts, scientists and the general public, and came to near-unanimous consensus on a path forward.

So far, the bill's co-sponsors include lawmakers from a number of coastal communities: Reps. Kathleen Fogarty, D-South Kingstown; Deb Ruggiero, D-Jamestown; Lauren Carson, D-Newport; Robert Craven, D-North Kingstown; Arthur Handy, D-Cranston, Samuel Azzinaro, D-Westerly, and Jason Knight and Liana Cassar, D-Barrington.

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## What's in the bill?

First off, House Bill 8055 starts out with two pages of "legislative findings." Among other things, they include an acknowledgement that "a lack of a workable, readily identifiable right of access to the shore by the public has led to confusion, conflict and disputes."

The "findings" section also states that "private property owners may maintain a title interest to the sandy and rocky shores, but certain components of ownership, such as the ability to share in reasonable use of the shore, are held in trust for the general public under the state constitution."

A 1982 Rhode Island Supreme Court decision accepted the mean high water line as a boundary between private property and public shoreline. But that line "cannot be determined by the naked eye and requires special surveying expertise and equipment," the bill notes, which makes it "impossible" for the general public to find.

Additionally, the method for calculating mean high tide doesn't take dynamic forces like wind and waves into account. Consequently, relying on mean high tide as a boundary "results in the public only having meaningful access at or near the time of low tide if at all," the bill states.

As a result, the bill's authors go on to say, the "constitutional right and privileges of the shore may be illusory."

It's unusual for a bill to contain so much contextual information — but one concern that was raised during the commission's meetings was that Rhode Island laws can be tough for courts to interpret, because the General Assembly often fails to explain its intent.

Rhode Island's constitution has long guaranteed the right to exercise the "privileges of the shore," but state law has never explained what's considered the "shoreline."

House Bill 8055 would amend state law to include the following definition: "The public's rights and privileges of the shore may be exercised, where shore exists, on wet sand or dry sand or rocky beach, up to the recognizable high tide line; provided, however, that the public's rights and privileges of the shore shall not be afforded where no passable shore exists, nor on land above the vegetation line, sea walls, or other legally constructed shoreline infrastructure."

To translate: You can walk, fish, or gather seaweed up to the "recognizable high tide line," though there may be places where the shoreline has been built up in a way that makes that impossible.

Whether you can also sit down and lay out a beach towel below the recognizable high tide line is a matter of ongoing debate — and outside the scope of the bill.

The "recognizable high tide line" is defined in the bill as a boundary 10 feet landward "from the line or mark left upon tide flats, beaches, or along shore objects that indicates the intersection of the land with the water's surface level at the maximum height reached by a rising tide."

Visual markers could include "a line of seaweed, oil or scum along shore objects," or "a more or less continuous deposit of fine shell or debris on the foreshore or berm."

## **The battle ahead for RI shoreline access**

STARTERS, the group opposing the legislation, was formed last year in response to a bill that would have decriminalized trespassing within 10 feet of the most recent high tide line.

"We acknowledge that constitutional right to shoreline access, we absolutely acknowledge that," Boyle said. "The question is just where that line is drawn."

In the group's view, the 1982 Supreme Court decision firmly established that the mean high water mark as the boundary between private and public. If that boundary moves further inland, "we really do believe that's an encroachment on someone's private property, same as if the state was to build a highway," Boyle said.

Such an encroachment would be considered a "taking" under the U.S. Constitution, which would mean that landowners would have to be compensated, Boyle argued. "It could be an enormous price tag for the taxpayer," he said.

Publicly available information about STARTERS is largely limited to records in the state's lobbying database, which indicate that Boyle and former State Police Col. Brendan P. Doherty are getting paid \$2,000 a month to represent the group.

Boyle would only describe the group's members as "property owners."

Filippi, in an email to The Journal, dismissed the group's warnings as "meritless."

"The public has no shore rights if they exist only below the waterline, as is the case on many beaches in this state," he wrote. "The General Assembly's duty is to fix this generational wrong in a fair and reasonable manner that respects private property. That's what our legislation does, and it's why STARTERS' threats are meritless."

He added: "I'm confident that the House and Senate will uphold the constitutional shore rights of all Rhode Islanders, and be undeterred by vague threats from secret legal groups hired by unknown property owners."

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Also gearing up for battle is Scott Keeley, the activist who was arrested while collecting seaweed in 2019.

"I think we're facing a small group of shoreline property owners that have come from other states and maybe they were misled by a real estate agent and they thought they had a private beach," he said. "And when they found out about the Rhode Island constitution, they just decided they didn't like it."

"That might be part of why my arrest became such a story in 2019, because it really hit a chord with the residents of Rhode Island," he added. "It wasn't about me."

Keeley noted that there would need to be a concerted push from activists to get the General Assembly to pass the bill.

"We need a lot of people to come out and write letters, and we need people from all over the state to ask their representatives to co-sponsor or at least commit to supporting the bill," he said.

The bill has been referred to the House Judiciary Committee, but is not yet scheduled for a hearing.