

DEMOCRACY DEFERRED: IMPLEMENTING SEPARATION OF POWERS IN RHODE ISLAND

November 3, 2004, to March 1, 2008

A Progress Report

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THE MODERN CAMPAIGN FOR SEPARATION OF POWERS: A BRIEF HISTORY

In the mid-1950s the Rhode Island General Assembly began appointing its members and others to dozens of boards and commissions which execute the laws the Assembly passes.

The Doctrine of Separation of Powers, a cornerstone of American democracy, traditionally forbids lawmakers to execute their own laws.

In 1994, the Governing Board of Common Cause Rhode Island adopted, as its first priority, a campaign to end legislative encroachment on boards with executive functions under state law. For the next five years, however, the General Assembly refused to place before the voters constitutional amendments banning the practice.

In 1999 the State Supreme Court ruled that the Rhode Island Ethics Commission did not have the constitutional power to enact regulations forbidding such appointments.

In July 2000, the same court overturned a Superior Court ruling that the State Lottery Commission's nine-member board was unconstitutional by virtue of its six legislative members. The ruling even decreed that the Rhode Island General Assembly could wield any power whatever unless the state constitution expressly forbade it.

The Rhode Island Constitution then in effect did not expressly ban legislative appointments to boards with executive functions under state law.

At that point, the campaign for Separation of Powers seemed doomed.

A month after the 2000 Supreme Court ruling was published, however, Governor Lincoln Almond placed a non-binding question on the ballot asking the voters if they approved of constitutional amendments establishing separation of powers. Sixty-six percent of those voting answered YES.

Two years later, 76 percent of those voting approved a second, non-binding question calling for a Separation of Powers amendment.

Late in the 2003 legislative session, after months of delay and attempts to derail the campaign for Separation of Powers, the General Assembly unanimously approved a four-part Separation of Powers amendment to the Rhode Island Constitution.

At the general election of November 2004, 78.3 percent of those voting ratified the historic Separation of Powers amendment that, for the first time in Rhode Island's constitutional history, banned legislative encroachment upon the executive branch.

This report examines the question: to what extent has the 2004 Separation of Powers amendment, overwhelmingly approved by the electorate, been implemented?

In other words, has the voters' will been done?

WHERE WE STAND AS OF MARCH 1, 2008 ...

... three years and four months after passage of the 2004 Separation of Powers amendment

- The 2004 SOP amendment passed by 78.3 percent of the voters bans legislators and their appointees from sitting on boards with executive powers under state law; it makes the three departments of state government “separate and distinct”; and it vests in the governor the power to appoint, with the advice and consent of the Senate, the members of boards with executive powers under state law.
- In 2005 and 2006, the General Assembly amended the statutes governing appointments to all but five of the surviving boards with executive functions affected by the 2004 Separation of Powers (SOP) amendment. The five remaining boards and commissions:
 - The Coastal Resources Management Council (CRMC)
 - The Narragansett Bay Commission (NBC)
 - The Rhode Island Ethics Commission (RIEC)
 - The Rhode Island Human Resource Investment Council
 - The I-195 Redevelopment Board
- In late June 2006 the House passed a resolution asking the Supreme Court to rule on four questions of law connected to the Separation of Powers amendment. After the November elections that year, the court declined to rule on the four questions because a newly elected General Assembly was to be seated.
- In late June 2007, the House passed another resolution asking the court to rule on the same four questions. This time, however, the resolution was not transmitted to the court for approximately six months.
- In December 2007, the House of Representatives transmitted to the Rhode Island Supreme Court its request for a ruling on four questions of law connected to the SOP amendment. Subsequently, the Supreme Court issued a briefing schedule and called for *amicus curiae* briefs.
- It is possible that the court’s answers to these questions will permit the General Assembly to continue to control more than half the appointments to the Coastal Resources Management Council and to seize control of the governor’s appointments to all other boards with executive functions under state law and in effect veto the electorate’s 2004 Separation of Powers vote.
- The 2007 House request is a test of the 2004 SOP amendment.
- An undetermined number of seats on boards with executive powers vacated when legislative appointees were removed have not yet been filled, either because, (1) the governor has not made appointments; or because (2) the Senate has not heard or acted on an undetermined number of gubernatorial appointments. Common Cause Rhode Island is currently researching this issue and will release a report shortly.
- Common Cause RI believes that Article IX, Section 5 of the RI Constitution is self-executing, currently under consideration by the RI Supreme Court, and the Governor is empowered and obligated to make all appointments to the five remaining boards and commissions referenced above, with the advice and consent of the Senate.
- As of March 1, three 2008 bills, as yet unheard, bring appointments to NBC into conformity with the SOP amendment. Another three bills, also unheard, propose the same reforms for appointments to CRMC.

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The remainder of this report explains how we got to this point.

WHAT SEPARATION OF POWERS MEANS AND WHY IT'S IMPORTANT

All 50 of the United States' state constitutions and the U.S. Constitution separate the three great powers of government into three departments: the **legislative department** makes the laws; the **executive department** implements the laws; the **judicial department** rules on the constitutionality of the laws and on their implementation by the executive department.

Known universally as the Doctrine of Separation of Powers, this governmental structure and its accompanying checks and balances prevent any one of the departments from tyrannizing the others.

Dividing the powers of government into three departments means that officials of one department may not wield the powers of either of the other two. Legislators make the laws, but they cannot implement or interpret them. Executive officials implement the laws but they cannot make them or interpret them. Judges interpret the laws but they cannot make them or implement them.

State and federal courts have upheld the Doctrine of Separation of Powers when it is explicitly or implicitly present in state and U.S. constitutions.

Until 2004, however, Rhode Island was the exception to that rule among the fifty (50) states.

RHODE ISLAND'S GENERAL ASSEMBLY INFILTRATES THE EXECUTIVE DEPARTMENT

In the mid-1950s, as we have seen, the Rhode Island General Assembly began placing its members and its appointees on dozens of boards and commissions that execute the laws the Assembly passes.

State courts have always held that legislative oversight of the laws' execution is a constitutional extension of the power to make the laws. Legislative leaders claimed that placing their appointees on boards with executive functions helped them oversee those boards.

The claim was false. Legislators cannot appropriately oversee entities with executive functions when they themselves are the executors. Self-oversight is a definitional and functional self-contradiction.

Legislative infiltration of executive boards peaked in the 1970s and 1980s. By 2004, there were more seats for legislators on executive boards (141) than there were legislators to fill them (113). That number does not include hundreds of other seats for legislators on non-executive committees, commissions, and boards. The practice had become unsustainable.

The boards infiltrated by legislative appointments included the State Retirement Board, which in the mid-1950s acquired the chairs of the two legislative finance committees and the House Fiscal Advisor as members. Other well-known boards and public corporations followed, among them the Coastal Resources Management Council; the former Lottery Commission; the former Unclassified Pay Plan Board; the Narragansett Bay Commission; the Student Loan Authority; the Rhode Island Public Transit Authority; and the State Investment Commission.

RHODE ISLAND'S SUPREME COURT PERMITS LEGISLATORS ON EXECUTIVE BOARDS

In 2000, Rhode Island's Supreme Court ruled that the General Assembly could exercise any power whatever unless the state constitution expressly forbade the practice. That ruling included placing legislative members and appointees on executive boards, which the state constitution did not then expressly prohibit.

In sum, this ruling reinforced earlier court rulings that there was no separation of powers between Rhode Island's legislative and executive departments. The door was now officially wide open to legislative encroachment upon the executive branch. (*Lincoln C. Almond, in his capacity as Governor of the State of Rhode Island et al v. The Rhode Island Lottery Commission, Newport Grand Jai Alai, LLC, and Burrillville Racing Association, d.b.a. Lincoln Greyhound Park et al, No. 99-525 [July 27, 2000]*)

WHAT THE 2004 SOP AMENDMENT SAYS

The four-part amendment's mandates:

1. legislators and their appointees may not sit on boards which execute state law (RI Const. Art. III § 6);
2. the executive, legislative, and judicial branches of state government are separate and distinct (RI Const. Article V); and
3. the governor shall appoint, with the advice and consent of the Senate, members of boards and commissions with executive powers under state law (the amendment also provides that the legislature can vest the appointment of other officials in constitutional officers and department heads within their own departments) (RI Const. Art. IX § 5).

The fourth part of the amendment repeals the plenary powers clause (RI Const. Art. VI § 10), the basis for the 2000 state Supreme Court ruling described above.

LEGISLATIVE DUTY UNDER THE RHODE ISLAND CONSTITUTION

The Rhode Island Constitution affirms that “this Constitution shall be the supreme law of the state, and **any law inconsistent therewith shall be void. The general assembly shall pass all laws necessary to carry this Constitution into effect.**” RI Const. Art. VI § 1; emphasis added.

Have lawmakers in Rhode Island done their duty to implement the SOP amendment?

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IMPLEMENTING THE SEPARATION OF POWERS AMENDMENT

SOP AMENDMENT NULLIFIES THE LEGISLATURE'S FORMER SUPREMACY

Between 1843 and 2004, the Rhode Island General Assembly, supported by case law of the Rhode Island Supreme Court, dominated the executive.

Now, however, for the first time in the state's constitutional history,¹ the General Assembly is one of three "separate and distinct" branches of government. Its former plenary powers have been repealed. It cannot place its appointees on boards which execute its laws. It is but one among equals.

Old beliefs die hard, however. From November 2004 to the present, the legislature has consistently sought to postpone or prevent full implementation of the Separation of Powers amendment, aided by some genuine difficulties in implementation.

ATTEMPTING TO "CARVE OUT" LEGISLATIVE BOARDS

In mid-December 2004, House Speaker William Murphy, D-West Warwick, announced that the six legislative members on the nine-member State Lottery Commission could retain their seats because the state constitution places lotteries under the General Assembly's "prescription and regulation."

In early January of 2005, Murphy announced that he would seek a Supreme Court advisory opinion as to whether legislators could continue to sit on the Lottery Commission and the Coastal Resources Management Council, both of which he declared were under the legislature's control.

The day following Murphy's announcement, Governor Donald Carcieri, a Republican, made fourteen appointments to both the Lottery Commission and CRMC to replace legislative appointments on the grounds that those appointments were now unconstitutional.

After two weeks of heavy criticism from a variety of sources, Murphy announced that he would not be seeking an advisory opinion after all, stating, "I will not be seeking a Supreme Court advisory opinion on the Constitutional questions involving the Lottery Commission, the Coastal Resources Management Council and a few of the other boards. While I still believe there are merits to the legal questions involved in this issue, I have reached this decision to expedite the implementation of Separation of Powers and to *honor the will of the people*" (*emphasis added*). The governor ultimately withdrew his nominations.

THOUGHTFUL DELIBERATION OR FOOT-DRAGGING?

During the 2005 session, the two houses of the General Assembly tinkered with approaches to reconfiguring boards subject to the SOP amendment. All told, 53 bills with Separation of Powers implications were introduced, 25 in the Senate and 28 in the House. Some of these bills addressed an array of boards. Others addressed only one.

By the end of the session, the Assembly had abolished two active boards and 11 inactive boards. It had also reconfigured 12 active boards to comply with the SOP amendment and reclassified two other active boards as local rather than state entities, thus placing them outside the ambit of the SOP amendment.

The active boards that were repealed: the State Lottery Commission and the Unclassified Pay Plan Board (UPPB). The Lottery became a division within the Department of Administration. The functions of UPPB (setting salaries of state employees, including all judges and magistrates, in the unclassified service) were assigned to the Department of Administration. Please see Appendix B for a full list of abolished or reconfigured boards in 2005.

¹ Rhode Island was the last of the original 13 states to promulgate a constitution (in 1843, 67 years after the Declaration of Independence was signed).

At the end of the 2005 session, a number of SOP bills addressing the 40 remaining boards needing re-configuration were inexplicably recommitted to committee, thereby killing them for the rest of the year. At the end of the 2006 session, 35 more boards had been reconfigured to conform to the SOP amendment, yet five boards had still not been re-configured to comply with the SOP amendment. Please see Appendix C for a full list of boards reconfigured in 2006 and the five left unresolved.

UNFORESEEN DIFFICULTY

During the 2005 and 2006 sessions, all parties to the SOP movement wrestled with an unanticipated difficulty: how to handle appointments to executive boards made by officials other than the governor – for example, by mayors, by named institutions or by professional groups.

In the end, the parties agreed in principle on a formula. The governor would appoint persons to those seats after giving “due consideration to the recommendations” of the officials, institutions, and professional groups that had formerly made the appointments.

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THE LEGISLATURE FIGHTS BACK

THE 2006 ASSAULT ON SEPARATION OF POWERS

On May 31, 2006, H 8170 was introduced in the House of Representatives repealing the entire enabling statute for the Coastal Resources Management Council (RIGL 46-23). It then reissued the statute, *word for word*, but codified it as RIGL 46-23.3.

The reason for this baffling bill (which was never heard) emerged three weeks later.

On June 23, the last day of the 2006 session, Rep. Elaine Coderre, D-Pawtucket and chair of the House Committee on Separation of Powers, introduced H 8290. Her committee then heard and voted H 8290 out with a recommendation of passage. The bill was then passed by the House of Representatives later that same evening.

Using H 8170, the bill recodifying CRMC’s enabling statute as justification, H 8290 asked the Rhode Island Supreme Court to rule on four questions of law.

Two of the questions asked whether the General Assembly’s leaders could continue to make eight of 15 appointments to the Coastal Resources Management Council (CRMC). A third question asked the court whether CRMC is “a legislative function.”²

The fourth question (the third in order) appears innocuous (*emphasis added*):

“(3) Is the Constitutional Amendment to Article IX, Section 5, so-called Separation of Powers Amendment, passed by the electorate on November 2, 2004, which calls into question the constitutionality of the appointing authority, **self executing** or does it require legislative enactment for its implementation?”

Article IX section 5, as amended by the voters in 2004, provides that only the governor can appoint the members of boards with executive functions under state law. The governor’s power is checked by the requirement that the Senate approve his nominations - a classic feature of American Separation of Powers since 1787.

If Art. IX § 5 is “self-executing,” it does not need to be implemented by law. It automatically takes effect.

If the court rules that Art. IX § 5 is not self-executing, then the General Assembly would have to pass a separate law authorizing each gubernatorial appointment to state boards and commissions exercising executive functions. Such a ruling would re-instate pre-Separation of Powers legislative control over all

² The legislature persists in the belief that RI Const. Art. I § 17 gives it executive powers with respect to the environment. It does not.

gubernatorial appointments to boards and commissions with executive powers, thereby gutting that part of the 2004 SOP amendment.

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THE 2007 LEGISLATIVE SESSION

THE FIVE REMAINING BOARDS – STILL IN VIOLATION

At the beginning of the 2007 legislative session, five boards needed to be reconfigured to complete implementation of the SOP amendment. All five were the subject of at least one bill. None passed. Here is an overview of those bills organized by board.

I-195 REDEVELOPMENT BOARD

- One bill sponsored by a Senate Republican would have repealed the board.
- One bill sponsored by a House Democrat contained appointment provisions that would have conformed to the SOP amendment in some ways but would have violated it in other ways.

RHODE ISLAND ETHICS COMMISSION

- One pair of bills sponsored by Senate and House Democrats contained appointment provisions that would have violated the SOP amendment.

HUMAN RESOURCE INVESTMENT COUNCIL

- One bill sponsored by a House Democrat contained appointment provisions that would have violated the SOP amendment.

NARRAGANSETT BAY COMMISSION

- One pair of bills sponsored by Senate and House Republicans contained appointment provisions that would have conformed to the SOP amendment.
- Two other bills, one by a Senate Democrat and the other by a House Democrat, sought to evade the reach of the SOP amendment by transforming the commission from a state quasi-public corporation into a local entity operated by the towns which it serves.

COASTAL RESOURCES MANAGEMENT COUNCIL

- One pair of bills sponsored by Senate and House Republicans contained appointment provisions that would have conformed to the SOP amendment.
- One bill sponsored by a Senate Democrat contained appointment provisions that would have violated the SOP amendment.

THE 2007 ASSAULT ON SEPARATION OF POWERS

Two more House bills also addressed the status of CRMC, but they did not seek to bring its appointments into conformity with the SOP amendment. They replicated almost exactly the two bills which constituted the 2006 assault on Separation of Powers.

- H 6266, sponsored by Rep. John DeSimone, D-Providence and chair of the House Committee on Separation of Powers, repealed § 46-23, CRMC's enabling statute, and then reissued the chapter, with minor changes, as § 46-23.3. This time the bill was heard, reported out, and passed by the House, but it was held on the desk, i.e., never transmitted to the Senate.
- The second bill, H 6556, also sponsored by Rep. DeSimone, replicated, word for word, the 2006 bill requesting a ruling on the four questions of law described above. H 6556 was also heard, reported out, and passed (all late on the last day of the 2007 session). Then H 6556 was inexplicably held on the desk (not transmitted to the court) until ...

... in early December 2007, a television reporter began asking questions about the House of Representatives June 2007 request for an Advisory Opinion from the Supreme Court. Hours after his questions, as reported during the 6 PM news on December 10, the House request for the advisory ruling on the four questions of law was transmitted to the court.

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LEGISLATIVE OVERSIGHT: THE MISSING SOP INGREDIENT

Removing legislators and their appointees from executive boards always had the overriding purpose of freeing lawmakers to conduct genuine oversight of the implementation of the laws they pass.

So long as lawmakers mistakenly believed that legislative seats on some dozens of executive boards provided oversight of the executive apparatus of state government, no oversight was possible. You cannot oversee what you yourself are doing.

On November 30, 2005, Common Cause Rhode Island released a 132-page white paper entitled *Making Government Work: Legislative Oversight Under Separation of Powers* (available on the “Research” page at commoncauseri.org). In the final chapter, we made the following recommendations (we recognize, of course, that the General Assembly is under no obligation to implement our or any other organization’s recommendations):

1. Finish restructuring Rhode Island boards and commissions to comply with the Separation of Powers amendment enacted in 2004.
2. Leave Rhode Island’s Administrative Procedures Act intact.
3. Increase accountability of state agencies and quasi-public corporations and their employees:
 - a. Establish sound performance measures for state agencies and measure their performance, both during the budget process and throughout the year.
 - b. Establish a legislative oversight review process to evaluate the performance of state agencies and quasi-public corporations.
 - c. Mandate legislative evaluation and follow-up on all audits and annual reports.
 - d. Begin the process of requiring personnel performance evaluations for state employees.
 - e. Explore establishing a “government waste hotline.”
4. Appropriate money and staff for oversight only after the General Assembly has established the oversight process through amendments to the Rhode Island General Laws and in the Rules of the House and Senate.
5. Modify the General Assembly schedule to provide for effective oversight.
6. Improve the public’s access to electronic information about all state agencies and their performance.
 - a. Require that basic, accurate, and consistent electronic information be provided to the public about all state agencies and quasi-publics;
 - b. Require all state agencies which are audited, either by the state’s auditors or by independent auditors, to submit their audit reports electronically for posting on the General Assembly’s web site.
7. Subject the Joint Committee on Legislative Services to the auditing and reporting requirements now binding on all other administrative agencies.

It appears that the Administrative Procedures Act remains unchanged (Recommendation 2). We do not believe that any of the other recommendations have been actively considered.

As far as we can tell, the following legislative entities were actively pursuing oversight in the 2007 legislative session. We refer here to activities other than the routine hearings on bills referred to committee:

- Senate Committee on Government Oversight

- Joint Legislative Committee to Oversee the State Lottery
- Permanent Joint Legislative Committee on Health Care Oversight

We are aware that House Speaker William Murphy, D-W. Warwick, has impaneled a special House commission to study state pensions and retirement.

We also note that the Senate Committee on Government Oversight scheduled a hearing on February 4, 2008, to discuss the committee's report on its work during the 2007 legislative session.

The Assembly has created approximately 80 boards and commissions with a wide array of study objectives and possible oversight functions (these are in addition to the standing House, Senate, and joint committees listed on the legislative website). Some of these commissions have apparently not met in years; others are active to some degree. Because legislative committee and commission minutes are not available on line, interested parties cannot assess the level or quality of these entities' oversight activities.

In sum, it appears that, more than three years after passage of the SOP amendment and with a few welcome exceptions, legislative oversight has not become a legislative priority.

APPENDIX A

DOES ARTICLE I SECTION 17 OF THE RHODE ISLAND CONSTITUTION TRUMP THE 2004 SEPARATION OF POWERS AMENDMENT?

IN PARTICULAR, DOES ARTICLE I SECTION 17 PERMIT THE GENERAL ASSEMBLY TO APPOINT ITS MEMBERS AND OTHERS TO CRMC?

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Rhode Island Constitution

ARTICLE I

DECLARATION OF CERTAIN CONSTITUTIONAL RIGHTS AND PRINCIPLES ...

Section 17. Fishery rights -- Shore privileges -- Preservation of natural resources. -- The people shall continue to enjoy and freely exercise all the rights of fishery, and the privileges of the shore, to which they have been heretofore entitled under the charter and usages of this state, including but not limited to fishing from the shore, the gathering of seaweed, leaving the shore to swim in the sea and passage along the shore; and they shall be secure in their rights to the use and enjoyment of the natural resources of the state with due regard for the preservation of their values; and it shall be the duty of the general assembly to provide for the conservation of the air, land, water, plant, animal, mineral and other natural resources of the state, and to adopt all means necessary and proper by law to protect the natural environment of the people of the state by providing adequate resource planning for the control and regulation of the use of the natural resources of the state and for the preservation, regeneration and restoration of the natural environment of the state.

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THE ARTICLE IS EASIER TO UNDERSTAND IF ITS THREE PARTS ARE SEPARATED, AS FOLLOWS (EMPHASIS ADDED):

Section 17. Fishery rights -- Shore privileges -- Preservation of natural resources. --

PART ONE

The people shall continue to enjoy and freely exercise all the rights of fishery, and the privileges of the shore, to which they have been heretofore entitled under the charter and usages of this state, including but not limited to fishing from the shore, the gathering of seaweed, leaving the shore to swim in the sea and passage along the shore;

PART TWO

and they [the people] shall be secure in their rights to the use and enjoyment of the natural resources of the state with due regard for the preservation of their values;

PART THREE

and it shall be the duty of the general assembly to provide for the conservation of the air, land, water, plant, animal, mineral and other natural resources of the state, and to adopt all means necessary and proper by law to protect the natural environment of the people of the state by providing adequate resource planning for the control and regulation of the use of the natural resources of the state and for the preservation, regeneration and restoration of the natural environment of the state.

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Part Three of the amendment is crucial to answering these questions. The single sentence of which I-17 consists is, unfortunately, circular and redundant. It is particularly important, therefore, that unnecessary or misleading words be stripped away. Here is how the clause would read if edited (any emphasis added):

1. The General Assembly is charged with a two-part duty:
 - a. “To provide for the conservation” of named and unnamed “natural resources of the state”;
 - b. “To adopt all means³ necessary and proper **by law** to protect the natural environment of the people of the state...”

a. and b. are essentially redundant. They both say that the Assembly must “conserve” and “protect” the state’s natural resources.

b. is more specific than a., however, in that b. explains how the Assembly is to protect the natural environment: by adopting “all means necessary and proper **by law**” to do so. Not all means without qualification, but all means “necessary and proper **by law**.”

The arrangement of the words in this crucial phrase is archaic. The phrase can be better understood by arranging the words conventionally:

“to adopt by law all necessary and proper means to protect ...”

To discharge the mandate of Art. I § 17, therefore, the Assembly must pass laws protecting the environment by methods which are needed and “proper.” We take “proper” to mean that the laws which create the necessary means must conform to the state constitution, as all laws must do.

2. In enacting laws creating necessary and proper means to protect the natural environment, the Assembly is directed to enact laws which provide “**adequate resource planning**” (a vague term). What kind of “resource planning” must these laws provide for? “Resource planning ...”
 - a. “... **for** the control and regulation of” the use of the state’s natural resources; and
 - b. “... **for** the preservation, regeneration and restoration of the natural environment of the state.”

This unfortunately circular article can be reduced to the following essentials:

The General Assembly is empowered to pass laws to protect the environment by providing “adequate resource planning” to regulate the use of natural resources and to preserve the state’s natural environment. The laws must be necessary and constitutional.

The essence of Art. I § 17 is the phrase “**adopt all means necessary and proper by law.**” Whatever methods the Assembly enacts into law to conserve and protect the state’s natural resources, the methods must be constitutional as well as needed.

Article I § 17 does not endow the Assembly with any executive authority. It confines the Assembly’s authority over the environment to enacting laws providing “resource planning.”

Article III § 6 bars legislators from serving on any “state ... entity exercising executive power under the laws of this state.”

Article IX § 5 requires the governor to appoint the members of “any ... state ... entity which exercises executive power under the laws of this state.”

No law enacted to carry Art. I § 17 into effect may violate the terms of Art. III § 6 or Article IX § 5.

³ We interpret “means” as “an agency, instrument, or method used to attain an end” (Random House Dictionary of the English Language, Unabridged Edition, 1967).

APPENDIX B

The active boards repealed in 2005:

The State Lottery Commission

The Unclassified Pay Plan Board

The inactive boards repealed in 2005:

Administrative Committee of the State Register
Board of Curators
Central Falls Review Commission
Commission on the Port of Galilee
2 committees to administer justice information systems

Drivers' Training School Licensing Board
Jamestown Ferry Commission
Prepurchase Firearm Safety Training Review Board (repealed in 2004)
RI Board for the Classification of Motion Pictures
Socially Responsible Corporations Commission

The 14 active boards reconfigured in 2005 to comply with the SOP amendment:

Budget and Review Commission
Historic District Commission
New Shoreham Tourism Council Bureau (became local board)
Newport County Convention and Visitors Bureau (became local board)
RI Clean Water Finance Agency
RI Economic Development Corporation
RI Historical Preservation & Heritage Commission

RI Housing & Conservation Board
RI Information Resources Management Board (subsequently repealed)
RI Student Loan Authority
RI Underground Storage Tank Board
RI Vehicle Value Commission (subsequently repealed)
Scenic Roadways Board
Tobacco Settlement Financing Corporation

APPENDIX C

THE 2006 STATUS QUO

At the end of the 2006 session, 35 more boards had been reconfigured to conform to the SOP amendment:

Agricultural Lands Preservation Commission	RI Public Transit Authority
Board of Bank Incorporation	RI Refunding Bond Authority
Board of Examiners of Interpreters for the Deaf	RI resource Recovery Authority
Board of Governors for Higher Education	RI Rivers Council
Board of Regents for Elementary – Secondary Education	RI Water Resources Board & Board
Child Advocate Appointing Committee	Corporate (counted as 2 boards)
East Bay Economic Initiative Steering Committee	Sinking Fund Commission
Fire Education & Training Coordinating Board	State Building Code Standards Committee
Fort Adams Foundation	State Comprehensive Plan Appeals Board
Health Professional Loan Repayment Board	State Conservation Committee
Library Board of Rhode Island	State Crime Laboratory Commission
Mosquito Abatement Board	State Investment Commission
Motor Vehicle Inspection Commission	State Medical Examiners' Commission
Permanent Committee on Medal of Honor Recipients	State Properties Committee
Public Finance Management Board	State Retirement Board
Rabies Control Board	State Traffic Commission
RI Farm, Forest ... Land Value Subcommittee	
RI Higher Education Assistance Authority	
RI Public Telecommunications Authority	

At the end of the 2006 session, five boards had still not been re-configured to comply with the SOP amendment:

The Coastal Resources Management Council (CRMC)	The RI Ethics Commission (RIEC)
The Narragansett Bay Commission (NBC)	The Human Resource Investment Council
	The I-195 Redevelopment Board

We believe that the first three of these five boards are especially important to the people of Rhode Island. Here are thumbnail descriptions of their powers and membership.

CRMC*: a regulatory agency with “primary responsibility ... for the preservation, protection, development and where possible the restoration of the coastal areas of the state via the issuance of permits for work with[in] the coastal zone of the state.” The General Assembly has consistently claimed that CRMC is legislature “turf” by virtue of RI Const. Art. I § 17.

16 members:

- 4 legislators appointed by the speaker and the Senate president (two each)
- 4 public members appointed by the speaker.
- 7 public members appointed by the governor, three with the advice and consent of the Senate
- 1 director of the Department of Environmental Management

NBC*: operates the state's largest sewer system that serves over 300,000 customers in the Providence metropolitan area and the Blackstone River Valley. Currently constructing a huge sewage run-off control system that will ultimately cost hundreds of millions of state and federal dollars. The legislature has attempted to remove NBC from the ambit of the SOP amendment by transforming it into a local rather than a state quasi-public corporation.

23 members:

4 legislators appointed by the speaker and the Senate president (two each)

10 public members appointed by the governor

9 members appointed by mayors of communities within the sewage district (two appointed by the mayor of Providence)

RIEC*: one of the most powerful ethics commissions in the United States. Has the power to enact ethics regulations with the force of law, investigate complaints of violations of those regulations and other ethics laws, and fine or remove from office public officials it finds have knowingly violated the Code of Ethics.

9 members:

4 appointed by the governor outright.

5 appointed by the governor from lists submitted by legislative members. These five appointments are thus "rubber-stamps" of legislative nominations rather than gubernatorial appointments. None of the nine appointments requires Senate confirmation as the statute now reads.

*Common Cause Rhode Island's position is that these boards are subject to SOP and that the governor with the advice and consent of the senate should appoint their members.