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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2013

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A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT - SELECT COMMISSION TO
INVESTIGATE THE FAILURE OF PUBLIC LOAN GUARANTEE PROGRAMS

Introduced By: Senators Hodgson, Bates, Ottiano, Kettle, and Algieri

Date Introduced: February 26, 2013

Referred To: Senate Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 42 of the General Laws entitled "STATE AFFAIRS AND
2 GOVERNMENT" is hereby amended by adding thereto the following chapter:

3 CHAPTER 155

4 SELECT COMMISSION TO INVESTIGATE THE FAILURE OF PUBLIC LOAN

5 GUARANTEE PROGRAMS

6 **42-155-1. Responsibilities of the commission. --** A commission is hereby created
7 consisting of nine (9) citizens of the state for the purpose of conducting an inquiry into the
8 creation and administration of loan guarantee programs funded or managed by the state of Rhode
9 Island, its municipalities, or quasi-public agencies thereof; and the failure of entities of
10 government which might have prevented the loss of taxpayer dollars related thereto. The
11 responsibilities of the commission shall include, but not be limited to:

12 (1) Investigation as to the circumstances surrounding the enactment and administration of
13 the Rhode Island jobs guaranty fund.

14 (2) Investigation of the failed state investment in the 38 Studios video game company.

15 (3) Investigation of the administration of the industrial and recreational building
16 authority.

17 (4) Investigation of the failed state investment in the CAPCO Steel Company.

18 (5) Investigation of the role state officials may have played in the administration of the

1 various loan guarantee programs.

2 (6) Investigation of transactions at the economic development corporation which may
3 have resulted from improper and/or insider influence and/or information.

4 (7) Investigation of those individuals and entities whose negligence and/or misconduct
5 directly or indirectly contributed to such financial loss sustained by the state and its citizens.

6 (8) Making a public presentation of the evidence uncovered by the aforesaid investigation
7 at hearings to be conducted by the commission.

8 (9) Making recommendations as to prosecutions of any criminal wrongdoing uncovered
9 by the investigation at hearings conducted by the commission.

10 (10) Making recommendations as to legislation to reform quasi-public administration of
11 public funds.

12 **42-155-2. Composition.** – The commission shall be composed of nine (9) members, five
13 (5) of whom shall be appointed by the governor, one of whom he shall designate as chairman; one
14 member who shall be appointed by the attorney general, one member who shall be appointed by
15 the speaker of the house of representatives, one member who shall be appointed by the president
16 of the senate, and one member who shall be appointed jointly by the minority leaders of the house
17 of representatives and senate. All commission members shall be subject to the provisions of
18 chapter 14 of title 36, the Rhode Island code of ethics in government, and those members who are
19 not already subject to the code of ethics shall be required to file a financial statement pursuant to
20 the provisions of section 36-14-17 within thirty (30) days of his or her appointment to the
21 commission.

22 **42-155-3. Quorum.** – (a) A quorum of the commission for the transaction of business
23 shall consist of a majority of its members. Unless otherwise provided, decisions of the
24 commission shall be by a majority of the votes cast. A vote by any member of the commission
25 may be cast only in person and not by proxy. A member must be present in person to be counted
26 toward a quorum. For the purpose of receiving evidence during the investigative phase of
27 the commission's duties, a quorum will consist of one member. Transcripts of the testimony of all
28 witnesses appearing at such sessions shall be maintained. All commission members will receive
29 notification of all such meetings.

30 (b) All commission hearings and meetings shall be conducted by the chairperson or a
31 member designated by the chairperson.

32 (c) The chairperson shall give posted notice of each hearing or meeting at least forty-
33 eight (48) hours prior to the time such hearing or meeting is to begin. The commission shall be
34 subject to chapter 42-46, the "Open meetings law."

1 **42-155-4. Powers of the commission – rules and regulations.** – The commission is
2 authorized and empowered to do all things necessary and engage in all activities it deems
3 necessary to carry out the responsibilities set forth in section 42-155-1. The commission is further
4 authorized and empowered to adopt by a majority vote of its members, and from time to time to
5 amend by a majority vote, the rules of procedure which shall govern all facets of the commission
6 inquiry and the powers and duties of the special counsel which are deemed necessary to carry out
7 the responsibilities set forth in section 42-155-1.

8 **42-155-5. Special counsel.** – The commission is authorized to supervise special counsel
9 and such assistant special counsel, investigators, and clerical personnel as are necessary to
10 implement the duties and responsibilities of this commission in its investigation of the failure of
11 publicly funded loan guarantee programs. The attorney general is hereby authorized to appoint
12 and empower special counsel and assistant special counsel as special assistant attorneys general
13 for the purpose of investigating, indicting, informing against and prosecuting criminal acts within
14 the scope of his/her inquiry. The special counsel and assistant special counsels are hereby
15 authorized to, with the approval of the governor, bring civil actions in the name of the state of
16 Rhode Island and the Rhode Island economic development corporation. All criminal and civil
17 actions commenced pursuant to this authority shall have precedence on all court calendars, and all
18 hearings and trials in such actions shall be accelerated, subject to applicable procedural rules.

19 **42-155-6. Subpoena power.** – The commission shall have the authority to issue
20 subpoenas and orders for attendance of witnesses and the production of books, accounts, papers,
21 documents and records. The members of the commission are hereby severally authorized and
22 empowered to administer oaths and take oral or written evidence under oath or affirmation. All
23 subpoenas issued shall be served as subpoenas in civil actions in the superior court are now
24 served. Any person who shall neglect or refuse to attend and give testimony or to answer any
25 lawful inquiry or to produce documentary material, if in his power to do so, may be adjudged in
26 criminal or civil contempt by the presiding justice of the superior court or his/her designee. The
27 commission and the superior court shall follow the procedure set forth in Section 22-6-2.1. If a
28 person is adjudged to be in civil contempt, he/she shall remain in contempt until such time as
29 he/she purges himself/herself of contempt by testifying or producing documentary material. Any
30 person who commits perjury or false swearing in response to the subpoena or order of the
31 commission shall be subject to the penalty for perjury pursuant to the provisions of chapter 33 of
32 title 11. Notwithstanding any other provision of the general laws, any rule or regulation or
33 common law right to the contrary, no person or business entity shall be allowed to assert a
34 privilege against or interpose an objection to the production and/or disclosure of books, accounts,

1 papers, documents and records, or information maintained in any form pertaining to accounts,
2 loans, and other financial transactions associated with publicly funded loan guarantee programs
3 which are the subject of this investigation.

4 **42-155-7. Immunity of witnesses during commission proceedings.** – (a) In the case of
5 any individual who has been or may be called to testify or provide other information at any
6 proceeding in connection with the investigation by the commission, the presiding justice of the
7 superior court or his/her designee shall issue in accordance with subsections (b) and (c) of this
8 section, upon the request of the chairperson of the commission, an order requiring such
9 individuals to give testimony or provide other information which he/she refuses to give or provide
10 on the basis of his/her privilege against self-incrimination.

11 (b) Before issuing an order under subsection (a) of this section the presiding justice shall
12 be required to specifically find that the request for such an order has been approved by an
13 affirmative vote of a majority of the members of the commission five (5) days or more prior to
14 the day on which the request for such an order was made, the attorney general was served with
15 notice of an intention to request the order.

16 (c) The presiding justice or his/her designee, after notice to the witness, shall order the
17 witness to answer all questions put to him/her or produce the evidence. The witness may not
18 refuse to comply with the order on the basis of his/her privilege against self-incrimination, but the
19 witness shall not be prosecuted or subjected to penalty or forfeiture for, or on account of, any
20 transaction or matter regarding which in accordance with the order, he/she gave answer or
21 produced evidence, and no testimony or other information compelled under the order or any
22 information directly or indirectly derived from such testimony or other information shall be used
23 against the witness in any criminal case except he/she may be prosecuted or subjected to penalty
24 or forfeiture for any perjury false swearing or contempt committed in answering or failing to
25 answer or producing, or failing to produce, evidence with the order.

26 **42-155-8. Funding.** – The members of the commission shall serve without compensation.
27 All expenses incurred by the commission including the cost of the special counsel and assistant
28 special counsels shall be paid out of the general revenue of the state of Rhode Island.

29 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT - SELECT COMMISSION TO
INVESTIGATE THE FAILURE OF PUBLIC LOAN GUARANTEE PROGRAMS

- 1 This act would establish a select commission to investigate the failure of public loan
- 2 guarantee programs and prescribes its powers and duties.
- 3 This act would take effect upon passage.

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