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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2017

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A N A C T

RELATING TO TOWNS AND CITIES -- BLOCK ISLAND UTILITY DISTRICT ACT OF
2017

Introduced By: Senator V. Susan Sosnowski

Date Introduced: April 12, 2017

Referred To: Senate Commerce

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 45 of the General Laws entitled "TOWNS AND CITIES" is hereby
2 amended by adding thereto the following chapter:

3 CHAPTER 67

4 BLOCK ISLAND UTILITY DISTRICT ACT OF 2017

5 **45-67-1. Short title.**

6 This act shall be known and may be cited as the "Block Island Utility District Act of
7 2017".

8 **45-67-2. Definitions.**

9 Terms used in this chapter shall be construed as follows, unless another meaning is
10 expressed or is clearly apparent from the language or context:

11 (1) "BIPCO" means the Block Island power company.

12 (2) "BIPCO assets" means that real property, personal property, rights in any real and
13 personal property, facilities, equipment, contract rights, statutory rights and privileges, franchises
14 and other tangible or intangible property of any kind owned by BIPCO.

15 (3) "BIPCO contractual obligations" means the obligations represented by and inherent in
16 any contract entered into between BIPCO and another utility or other party, which obligations
17 remain outstanding in any part as of the date when BIPCO ceases to be an electric utility pursuant
18 to §45-67-8(1).

1 (4) "BIPCO debt obligations" means the obligations represented by and inherent in any
2 debt incurred by BIPCO for the purpose of financing any aspect of its electric system or
3 operations, which obligations remain outstanding in any part as of the date when BIPCO ceases to
4 be an electric utility pursuant to §45-67-8(1).

5 (5) "Qualified elector" means any person whose name appears on an active account with
6 the utility district and who is designated by the account holder to be the qualified elector. No
7 active account shall have more than one qualified elector and no qualified elector shall have more
8 than one vote.

9 (6) "Utility district" means the Block Island utility district, a quasi-municipal corporation,
10 having a distinct legal existence from the state, established and empowered by this chapter to:

11 (i) Fulfill electric utility functions, powers, rights, and obligations;

12 (ii) Exercise certain powers as an electric distribution company and power producer; and

13 (iii) Provide additional utility services not inconsistent with the duties, powers and
14 obligations of the utility district as defined in this section.

15 (7)"Utility service area" means that geographic area comprising New Shoreham, Rhode
16 Island.

17 **45-67-3. Statement of purpose.**

18 This chapter is intended to establish the Block Island utility district and to authorize and
19 enable the utility district to provide utility products and services as may be authorized, from time
20 to time, by the utility district's board of utility commissioners.

21 **45-67-4. Block Island utility district established.**

22 (a) There is hereby created a quasi-municipal corporation, having a distinct legal
23 existence from the state, to be known as the Block Island utility district, the boundaries of which
24 shall be coterminous with the boundaries of New Shoreham, Rhode Island. The utility district
25 shall have and be entitled to exercise the powers, rights and functions set forth in this chapter.
26 Notwithstanding any other provision of these general laws or of any regulation, ordinance, rules
27 or requirements promulgated thereunder to the contrary, upon the creation of the utility district,
28 all rights, obligations and duties under contracts and agreements to which BIPCO is a party that
29 are assumed by or transferred to the utility district shall not be affected, modified, limited, or
30 altered as a result of such assumption or transfer and shall be assumed, performed and be fully
31 enforceable by and against the utility district.

32 (b) In the event that BIPCO and the utility district are unable to agree on the price, terms
33 and conditions of such sale of personal property and assumption of such obligations, then BIPCO
34 shall continue as the electric utility servicing the utility service area, and the Block Island utility

1 district shall not function as an electric utility.

2 **45-67-5. Board of utility commissioners of the Block Island utility district**
3 **established.**

4 There is hereby created a board to be known as the board of utility commissioners of the
5 Block Island utility district. The powers of the utility district as set forth in this chapter, shall be
6 vested in and exercised by a majority of the members of the board of utility commissioners then
7 in office; provided, however, that the board of utility commissioners in its discretion may
8 delegate executive functions to managers, by resolution, rule or otherwise.

9 **45-67-6. Membership of board of utility commissioners.**

10 (a) The board of utility commissioners shall consist of five (5) members no less than
11 three (3) of whom shall be residents of the town of New Shoreham as defined by the Revised
12 Ordinances of the town of New Shoreham, Chapter 2, Article I, Section 2-2. A majority of the
13 board shall constitute a quorum and a majority of the members shall be necessary for all actions
14 taken by the board. No vacancy in the membership of the board shall impair the right of a quorum
15 to exercise all the rights and perform all the duties of the board. The initial elected members of
16 the board of utility commissioners shall be elected with staggered terms of two (2) years and four
17 (4) years. The three (3) candidates receiving the most votes will serve four (4) year terms; the two
18 (2) candidates receiving the next highest number of votes will serve two (2) year terms.
19 Thereafter, the members of the board of utility commissioners of the utility district shall be
20 elected for a term of four (4) years by ballot of qualified electors.

21 (b) The election of the initial board of utility commissioners shall be administered by the
22 town of New Shoreham using the list of qualified electors provided by BIPCO.

23 (c) Each member of the board of utility commissioners shall be a qualified elector. A
24 qualified elector shall be eligible to be a candidate for election to the board; provided, however,
25 that they shall first have filed a declaration of candidacy with the secretary of the board of utility
26 commissioners not later than thirty (30) calendar days prior to the scheduled date of the election
27 through which such person seeks to be elected. In the event of a vacancy occurring on the board
28 of utility commissioners by reason of death, resignation or other cause, the board itself may select
29 an eligible candidate to fill the vacancy until the next annual election. In the event that an active
30 account is in the name of a corporation or other entity, the designated qualified elector of such an
31 entity shall also be eligible to be a candidate for election to the board.

32 (d) The board of utility commissioners shall elect each year from among its members:

33 (1) A chairperson;

34 (2) A vice chairperson;

1 (3) A secretary; and

2 (4) A treasurer.

3 (e) The board of utility commissioners shall establish and adopt bylaws for the
4 management and conduct of the utility district's affairs and other aspects of the governance of the
5 utility district not otherwise controlled by this chapter.

6 **45-67-7. Compensation of the board – Employees of the utility district.**

7 (a) Members of the board of utility commissioners shall not be entitled to receive
8 compensation for attendance at scheduled and special meetings of the board of utility
9 commissioners. The salaries, compensation and expenses of employees and agents of the utility
10 district, shall be paid solely out of funds of the utility district. No part of the earnings of the utility
11 district shall inure to the benefit of any private person.

12 (b) The board may enter into employment contracts with its executive employees. The
13 board shall have the authority to approve employee benefit plans, including fringe benefits such
14 as, but not limited to, pension, health, disability and other insurances.

15 (c) No member of the board of utility commissioners shall directly or indirectly engage or
16 participate in the proceeds of any contract or agreement to supply anything of value or receive
17 anything of value from the utility district. The prohibition set forth in this subsection may be
18 waived by a vote of four (4) of the board of utility commissioners, if and only if the board of
19 utility commissioners shall have first obtained an opinion of the attorney general and/or the
20 Rhode Island ethics commission based on full disclosure of all relevant facts that the waiver does
21 not contravene state law and is otherwise in the best interests of the consumers served by the
22 utility district.

23 **45-67-8. Powers of the utility district.**

24 The utility district shall have the power:

25 (1) To acquire the BIPCO assets and to assume the BIPCO debt obligations. The sale by
26 voluntary purchase of such property and the assumption of such obligations shall be negotiated
27 between BIPCO and the utility district; provided, however, that upon acquiring BIPCO assets, the
28 utility district shall assume and fulfill all of BIPCO's related contractual obligations in full;

29 (2) To acquire such other real or personal property by voluntary purchase from the owner
30 or owners of the property, and to the extent that the board of utility commissioners deems it
31 advisable, to acquire property held by a corporation through acquisition of the stock of the
32 corporation and dissolution of the corporation;

33 (3) To acquire real property, fixtures, and rights and interests in real property within its
34 utility service area by eminent domain except for real property owned in whole or in part by the

1 town of New Shoreham or BIPCO, or real property owned by other utilities, subject to the
2 supervision of the public utilities commission in the manner prescribed in §39-1-31;

3 (4) To own, operate, maintain, repair, improve, enlarge, and extend, in accordance with
4 the provisions of this chapter, any property acquired under this section all of which, together with
5 the acquisition of the property, are hereby declared to be public purposes;

6 (5) To produce, purchase, acquire, distribute, and sell electricity at wholesale or retail
7 within its utility service area subject to franchise rights of other utilities; to lay down, construct,
8 own, operate, maintain, repair, and improve mains, pipes, towers, and other equipment and
9 facilities necessary, appropriate or useful for those purposes within its utility service area subject
10 to franchise rights of other utilities; and to contract with others for any or all of the foregoing
11 purposes;

12 (6) To produce, buy, sell, and trade electric capability, power, or energy products or
13 services at wholesale or retail within its utility service area subject to franchise rights of other
14 utilities; to purchase for its own use or for resale electric transmission service and ancillary
15 services within its utility service area subject to franchise rights of other utilities; and to engage in
16 any other transaction with respect to electricity or electricity products within its utility service
17 area subject to franchise rights of other utilities that was heretofore authorized for investor-owned
18 electric companies operating as domestic electric utilities within the state (including participation
19 in generating facilities as authorized by chapter 20 of title 39); provided, that the utility district
20 shall operate and be subject to regulation of its retail rates for electricity under title 39 when
21 operating within its utility service area;

22 (7) To acquire, own, lease, operate, maintain, repair, and expand facilities and equipment
23 within its utility service area subject to franchise rights of other utilities necessary, appropriate, or
24 useful to the operation of an electric utility;

25 (8) To acquire, own, lease, operate, maintain, repair, and expand facilities and equipment
26 within its utility service area subject to franchise rights of other utilities necessary, appropriate, or
27 useful to the operation of other utilities, including, but not limited to, communications services
28 such as Internet service, high-speed data transfer, local and long-distance telephone service,
29 community antenna television service, and to engage in the operation of such utilities within its
30 utility service area subject to franchise rights of other utilities;

31 (9) To sue and be sued;

32 (10) To adopt and alter a corporate seal;

33 (11) To acquire, hold, use, lease, sell, transfer, assign, or otherwise dispose of any
34 property, real, personal, or mixed, or any interest therein, for its corporate purposes, and to

1 mortgage, pledge, or lease any such property;

2 (12) To make and adopt bylaws for the management and regulation of its affairs;

3 (13) To borrow money for any of the purposes or powers granted to it under or by
4 operation of this chapter, including the creation and maintenance of working capital, and to issue
5 negotiable bonds, notes, or other obligations, to fund or refund the same, and to secure the
6 obligation of such bond, notes, or other obligations in any case by pledge of, or security interest
7 in, the revenues and property of the utility district;

8 (14) To fix rates (subject to the requirements of title 39 in the case of retail electric rates
9 within its utility service area) and collect charges for the use of the facilities or services rendered
10 by or any commodities furnished by the utility district; and

11 (15) To contract in its own name for any lawful purpose that would effectuate the
12 purposes and provisions of this chapter; to execute all instruments necessary to carry out the
13 purposes of this chapter; and to do all things necessary or convenient to carry into effect and
14 operation the powers granted by this chapter.

15 **45-67-9. Limitation of powers.**

16 All services provided by the utility district that constitute public utility services within the
17 meaning of §39-1-2 shall be subject to the applicable jurisdictions of the public utilities
18 commission and the division of public utilities and carriers.

19 **45-67-10. Exemptions.**

20 (a) The exemption waiver provided by the public utilities commission to BIPCO from the
21 terms of §39-1-27 shall also apply to the utility district and the public utilities commission shall
22 have the authority to provide such other waivers from this section as may be in the public interest.

23 (b) The utility district shall, from time to time, submit plans to the public utilities
24 commission on retail choice as defined in §39-1-27.3. The public utilities commission shall have
25 the authority to approve those plans as may be in the interests of all ratepayers of the utility
26 district, including the option of not offering retail choice. Any waiver on retail choice granted by
27 the public utilities commission to BIPCO shall also apply to the utility district.

28 (c) The exemptions provided for the Pascoag utility district and BIPCO under §§39-1-
29 27.3.1, 39-1-27.12, 39-2-1.2(b), 39-2-25, 39-26.1-1 through and including 39-26.1-6, and
30 chapters 1.1, 26, 26.2, 26.4, and 26.6 of title 39 shall also apply to the Block Island utility district.
31 The utility district shall be exempt from the provisions of chapter 18 of title 35.

32 (d) As long as the utility district has a waiver from the restructuring provisions of §39-1-
33 27, then the utility district shall also be granted a waiver from the provisions of §39-1-27.6 such
34 that the employees of the utility district may be allowed to provide both electrical generation and

1 distribution services.

2 **45-67-11. Bonds.**

3 (a) The utility district shall have the power and is hereby authorized from time to time to
4 issue its negotiable bonds for any of its corporate or district purposes and to secure the payment
5 of the bonds in such manner and by such means as may be provided in the resolution or
6 resolutions of the utility district authorizing the bonds, subject to the regulatory jurisdiction of the
7 division of public utilities and carriers in the manner prescribed in §39-3-15, where applicable.

8 (b) The utility district is specifically authorized to secure bonds that it may issue from
9 time to time by a pledge of, or creation of other security interest in, the revenues of the utility
10 district, which pledge or security interest may be enforceable by the grant of a conditional
11 franchise, in the event of default in the payment of the bonds, entitling the secured party or trustee
12 to enter upon and take control of the utility district's facilities and service and to provide utility
13 service and receive the revenues from the utility district's facilities and service for such period,
14 not exceeding twenty (20) years, as may be necessary to recover all payments due on the bonds.

15 (c) The bonds of the utility district shall be authorized by resolution of the board of utility
16 commissioners. The bonds shall bear such date or dates, mature at such time or times not
17 exceeding forty (40) years from their issuance, bear interest at such rate or rates payable at such
18 time or times, be in such denominations and in such form, carry such registration privileges, be
19 executed in such manner, be payable in such medium of payment, at such place or places and
20 such time or times and be subject to redemption at such premium, if required, and on such terms,
21 as the resolution may provide. The bonds so authorized and issued pursuant to this chapter may
22 be sold at public or private sale for any price or prices that the utility district shall determine.

23 (d) Pending the issuance of bonds in definitive form, the utility district may issue bond
24 anticipation notes or interim receipts in such form as the board of utility commissioners may
25 elect.

26 (e) The utility district is hereby authorized to provide for the issuance of refunding bonds
27 of the utility district for the purpose of refunding any bonds or notes then outstanding which shall
28 have been issued under the provisions of this chapter, including the payment of any redemption
29 premium on the bonds or interest accrued or to accrue to the earliest or subsequent date of
30 redemption, purchase or maturity of the bonds and, if deemed advisable by the utility district, for
31 the additional purpose of paying all or a part of the cost of acquiring, constructing, reconstructing,
32 rehabilitating, or improving any property, facilities or systems or parts of property facilities or
33 systems of the utility district. The proceeds of bond or notes issued for the purpose of refunding
34 outstanding bonds or notes may be applied, in the discretion of the utility district, to the purchase,

1 retirement at maturity or redemption of outstanding bonds or notes either on their earliest or a
2 subsequent redemption date and may, pending that application, be placed in escrow in the same
3 manner and through the same means as are generally available to and incumbent upon political
4 subdivisions of the state.

5 (f) It is hereby declared that the utility district and the carrying out of its corporate
6 purposes is, in all respects, for the benefit of the people of the state and for the improvement of
7 their health, welfare and prosperity, and the utility district will be performing an essential
8 governmental function in the exercise of the powers conferred by this chapter. The state therefore
9 covenants with the holders of the utility district's bonds that the utility district shall not be
10 required to pay taxes or payments in lieu of taxes to the state or any other political subdivision of
11 the state upon any property of the utility district or under its jurisdiction, control or supervision,
12 or upon any of the utility district's activities in the operation or maintenance of the property or
13 upon any earnings, revenues, monies or other income derived by the utility district, and that the
14 bonds of the utility district and the income from the bonds shall at all times be exempt from
15 taxation by the state and its political subdivisions. Notwithstanding the foregoing, nothing in this
16 section shall be deemed to prohibit the division of public utilities and carriers, the public utilities
17 commission and the department of attorney general from assessing the utility in accordance with
18 the provisions of §§39-1-23, 39-1-26, 39-19-9 and 39-19-14, if applicable.

19 (g) Any resolution or resolutions authorizing any bond, or any issue of bonds, may
20 contain provisions which shall be a part of the contract with the bondholders of the bonds thereby
21 authorized, as to:

22 (1) Pledging all or any part of the money, earnings, income, and revenues derived from
23 all or any part of the property of the utility district to secure the payment of any bonds or of any
24 issue of bonds subject to such agreements with bondholders as may then exist;

25 (2) The rates to be fixed and the charges to be collected and the amounts to be raised in
26 each year and the use and disposition of the earnings and other revenue;

27 (3) The setting aside of reserves and the creation of sinking funds and the regulation and
28 disposition thereof;

29 (4) Limitations on the right of the utility district to restrict and regulate the use of the
30 properties in connection with which the bonds are issued;

31 (5) Limitations on the purposes to which the proceeds of sale of any issue of bonds may
32 be put;

33 (6) Limitations on the issuance of additional bonds, including refunding bonds and the
34 terms upon which additional bonds may be issued and secured;

1 (7) The procedure, if any, by which the terms of any contract with bondholders may be
2 amended or abrogated, the percentage of bondholders whose consent shall be required for such
3 amendment or abrogation, and the manner in which consent may be given;

4 (8) The creation of special funds into which any earnings or revenues of the utility district
5 may be deposited, and the investment of the funds;

6 (9) The appointment of a fiscal agent and the determination of its powers and duties;

7 (10) Limitations on the power of the utility district to sell or otherwise dispose of its
8 properties;

9 (11) The preparation of annual budgets by the authority and the employment of
10 consultants and auditors;

11 (12) The rights and remedies of bondholders in the event of failure on the part of the
12 utility district to perform any covenant or agreement relating to a bond indenture;

13 (13) Covenanting that as long as any bonds are outstanding the utility district shall use its
14 best efforts to establish and maintain its rates and charges at levels adequate at all times to pay
15 and provide for all operating expenses of the utility district, all payments of principal, redemption
16 premium (if any), and interest on bonds, notes or other evidences of indebtedness incurred or
17 assumed by the utility district, all renewals, repairs and replacements to the property and facilities
18 of the utility district, and all other amounts which the utility district may be required by law to
19 pay; and

20 (14) Any other matters of like or different character which in any way affect the security
21 or protection of the bonds.

22 (h) The bonds of the utility district are hereby made securities in which all public officers
23 and bodies of this state and all municipalities and municipal subdivisions, all insurance
24 companies and associations and other persons carrying on an insurance business, all banks,
25 bankers, trust companies, savings banks, and savings associations (including savings and loan
26 associations), building and loan associations, investment companies and other persons carrying
27 on a banking business, all administrators, guardians, executors, trustees and other fiduciaries, and
28 all other persons whomsoever, who are now or may hereafter be authorized to invest in bonds or
29 other obligations of the state may properly and legally invest funds including capital in their
30 control or belonging to them. The bonds are also hereby made securities which may be deposited
31 with and shall be received by all public officers and bodies of this state, and all municipalities and
32 municipal subdivisions, for any purpose for which the deposit of bonds or other obligations of
33 this state is now or may thereafter be required.

34 **45-67-12. State not liable.**

1 Neither the state nor the town of New Shoreham is liable for the payment of the principal
2 of or interest on any bonds or notes of the utility district, or for the performance of any pledge,
3 mortgage, obligation, or agreement of any kind whatsoever which may be undertaken by the
4 utility district, and none of the bonds or notes of the utility district nor any of its agreements or
5 obligations are construed to constitute an indebtedness of the state or the town of New Shoreham
6 within the meaning of any constitutional or statutory provision whatsoever, nor shall the issuance
7 of bonds or notes, under the provisions of this chapter, directly or indirectly or contingently
8 obligate the state or any municipality of the state to levy or to pledge any form of taxation for
9 them or to make any appropriation for their payment. All of the revenue bonds or notes shall
10 contain on their face a statement to the effect that neither the state nor the town of New Shoreham
11 are obligated to pay the revenue bonds or notes, or their interest except from revenues of the
12 project or projects for which they are issued, and that neither the faith and credit nor the taxing
13 power of the state or of any municipality of the state is pledged to the payment of the principal of
14 or the interest on those bonds or notes.

15 **45-67-13. Money of the utility district.**

16 (a) All money of the utility district, from whatever source derived, shall be paid to the
17 treasurer of the utility district. The money on receipt shall be deposited forthwith in a separate
18 bank account or accounts. The money in the accounts shall be paid out with a check of the
19 treasurer, on requisition by the utility district, or of any other person or persons that the utility
20 district may authorize to make the requisitions. All deposits of money shall be secured by
21 obligations of the United States or of the state, of a market value at all times not less than the
22 amount of deposits, and all banks and trust companies are authorized to give security for the
23 deposits. The utility district shall have the power, notwithstanding the provisions of this section,
24 to contract with the holders of any of its bonds as to the custody, collection, security, investment
25 and payment of any money of the authority, or any money held in trust or otherwise for the
26 payment of bonds or in any way to secure the bonds, and to carry out any contract. Money held in
27 trust or otherwise for the payment of bonds or in any way to secure bonds and deposits of money
28 may be secured in the same manner as the money of the authority, and all banks and trust
29 companies are authorized to give security for the deposits.

30 (b) Notwithstanding subsection (a) of this section, or any other provision of this chapter,
31 the board of utility commissioners shall have the power to authorize, by resolution, a loan or
32 advance from one utility fund of the utility district to another. Any such interfund advance or loan
33 shall be for a term specified in the authorizing resolution of the board of utility commissioners
34 and shall bear interest at a rate reasonably determined by the board of utility commissioners to be

1 consistent with the public interest implicated in all funds involved in the interfund loan or
2 advance; provided, however, that an interest rate set at the rate applicable to the utility district's
3 most recent borrowing from a bank or other financial institution shall be presumptively
4 reasonable as the rate of interest for an interfund loan or advance.

5 **45-67-14. Alteration, amendment, repeal or severability.**

6 The right to alter, amend or repeal this chapter is reserved to the state, but no such
7 alteration, amendment or repeal shall operate to retroactively impair the obligation of any contract
8 made or assumed by the utility district under any power conferred by this chapter. If any section,
9 clause, provision or term of this chapter shall be declared unconstitutional, void, ultra vires or
10 otherwise ineffective in whole or in part, such determination of invalidity shall not otherwise
11 affect the validity or enforceability of any other provision of this chapter.

12 **45-67-15. Reversion upon dissolution or termination.**

13 Upon dissolution or termination of the utility district, the assets of the utility district that
14 remain after payment or making provision for payment of all bonds, notes and other obligations
15 of the utility district shall be distributed to the town of New Shoreham or as ordered by a court of
16 proper jurisdiction.

17 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 TOWNS AND CITIES -- BLOCK ISLAND UTILITY DISTRICT ACT OF
2017

- 1 This act would create the Block Island utility district to provide utility products and
- 2 services to the town of New Shoreham.
- 3 This act would take effect upon passage.

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