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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2019

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A N A C T

RELATING TO HEALTH AND SAFETY -- REFUSE DISPOSAL

Introduced By: Representatives Barros, Tobon, Mendez, Morin, and Marszalkowski

Date Introduced: February 25, 2019

Referred To: House Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 23-18.9-1 of the General Laws in Chapter 23-18.9 entitled "Refuse
2 Disposal" is hereby amended to read as follows:

3 **23-18.9-1. Responsibility for refuse disposal.**

4 (a)(1) Each city and town is required to make provision for the safe and sanitary disposal
5 of all refuse which is generated within its boundaries, including refuse from commercial and
6 industrial sources, but excluding refuse from sources owned or operated by the state or federal
7 governments, hazardous waste as defined in chapter 19.1 of this title and any refuse which is not
8 acceptable at a facility provided by the Rhode Island resource recovery corporation ([the](#)
9 ["corporation"](#)) under chapter 19 of this title. The disposal facilities used to meet this
10 responsibility may be located within or outside the municipality, may be publicly or privately
11 owned, and may include facilities used only by the owner. Each city and town will be required to
12 separate solid waste into recyclable and non-recyclable components before the material is
13 disposed of in any state owned facility. Implementation of the program of separation by any city
14 or town may be by separation at the source of generation or by separation at collection points or
15 transfer stations. Cities and towns may allow private and volunteer collection of recyclables. The
16 department of environmental management shall adopt and promulgate regulations to define
17 recyclable materials, and shall from time to time determine an implementation schedule for the
18 recyclable separation programs of the cities and towns. The implementation schedule shall be
19 determined and adopted by the department of environmental management after consultation and

1 cooperation with the cities and towns. The department shall adopt and promulgate an
2 implementation schedule and rules and regulations which require that commercial solid waste be
3 separated into recyclable and non-recyclable components before the material may be disposed of
4 at any state owned solid waste disposal facility. The department shall adopt and promulgate an
5 implementation schedule and rules and regulations which require that the solid waste generated at
6 state facilities be separated into recyclable and non-recyclable components before the material
7 may be disposed of in any state owned solid waste disposal facility.

8 (2) During the first three (3) years after a city or town enters the recycling program, a city
9 or town shall be deemed to have achieved compliance with the requirement of separation if that
10 city or town shall have achieved at least the same percentage of separation as achieved by similar
11 communities with compulsory programs of separation of recyclables.

12 (3) Beginning July 1, 2012 every city or town that enters into a contract with the Rhode
13 Island resource recovery corporation to dispose of solid waste shall be required to recycle a
14 minimum of thirty-five percent (35%) of its solid waste and to divert a minimum of fifty percent
15 (50%) of its solid waste. The recycling and diversion rate shall be achieved as prescribed in the
16 addendum required in subdivision 23-19-13(e)(3). For purposes of this section "diversion rate"
17 means the total amount (reflected as a percentage) of material, diverted from disposal through
18 waste prevention, recycling or re-use.

19 (b) The governing body of each city and town shall discharge its responsibility set forth
20 in subsection (a) by:

21 (1) Adopting reasonable rules and regulations governing the licensing of all qualified
22 persons engaged in the business of collection and hauling of refuse and operation of transfer
23 stations with respect to all refuse within its boundaries. All persons engaged in the business of
24 collection or hauling of refuse and operation of transfer stations within the boundaries of a
25 municipality, shall be issued a license upon application. No municipality shall unreasonably deny
26 a license to any reasonably qualified person.

27 (2) Contracting with the Rhode Island resource recovery corporation or a person
28 approved by the Rhode Island resource recovery corporation for the disposal of municipal refuse,
29 unless a municipality is operating its own landfill on December 1, 1986 or is disposing of its
30 municipal refuse under a contract approved by the corporation which was in effect on March 1,
31 1985, in which case the municipality shall be free to continue to use the landfill until its closure,
32 or to continue to dispose of its municipal refuse under the contract until the expiration of the
33 original term of the contract or the expiration of any extension of the contract approved by the
34 corporation or sooner termination.

1 (3) In the case of cities and towns where municipal waste collection is provided by
2 private contract between the generator of the waste and the hauler, adopting rules and regulations
3 for the fair allocation of the municipal rate provided under the provisions of § 23-19-13(g) among
4 those haulers licensed to collect and haul refuse within the cities and towns.

5 (4) Adopting rules and regulations that govern the separation of solid waste into
6 recyclable and non-recyclable components. Regulations adopted under this chapter may not be
7 inconsistent with any rules, regulations, standards, and criteria adopted by the department of
8 environmental management or the Rhode Island resource recovery corporation. Each city and
9 town is empowered to adopt the regulations and to contract with the Rhode Island resource
10 recovery corporation for the enforcement of the licensing provisions thereof, including
11 compliance with the provisions of a license designating a final disposal site for all refuse
12 collected or hauled by the licensee within the municipality's boundaries and requiring the
13 separation of recyclable materials from municipal, non-municipal, residential and commercial
14 sources.

15 (c) To assist each city and town in carrying out these responsibilities, the Rhode Island
16 resource recovery corporation shall:

17 (1) Administer any financial assistance granted by the state to localities, as provided in
18 this chapter, and establish and publish rules and regulations concerning eligibility, disbursement,
19 and use of financial assistance.

20 (2) Provide technical assistance to cities and towns concerning their refuse problems.

21 (d) Commencing on July 1, 2019, no city or town which has failed to attain the goals of
22 recycling a minimum of thirty-five percent (35%) of its solid waste and diverting a minimum of
23 fifty percent (50%) of its solid waste as provided for in subsection (a) of this section and § 23-19-
24 13 (hereinafter the "recycling and diversion rate"), shall be assessed a financial penalty, or be
25 penalized in its access to the facilities operated or maintained by the resource recovery
26 corporation, or have its contract for disposal of municipal solid waste and recycling services
27 denied or revoked by the corporation (hereinafter "penalties"), except as follows:

28 (1) The resource recovery corporation shall inform a municipality in writing if that
29 municipality is not in compliance with the recycling and diversion rate requirements. In such
30 event, the municipality shall develop a recovery plan with the resource recovery corporation to
31 attain the required recycling and diversion rates. This recovery plan shall be adopted within three
32 (3) months of issuance of the written notice by the corporation. The recovery plan shall include
33 specific yearly goals to be attained by the municipality. The corporation shall monitor the
34 municipality's compliance and shall not assess any penalties so long as the municipality is

1 reaching its yearly goals under the recovery plan:

2 (2) In the event a municipality believes it will be unable to attain the required recycling
3 and diversion rates at any time, then the municipality may petition the resource recovery
4 corporation for a reduction in the rates. The corporation may, in its discretion, permit such
5 reduction by applying the criteria set forth in this subsection. In considering whether to grant the
6 municipality a reduction in the recycling and diversion rates, the corporation may consider:

7 (i) The efforts which have been undertaken by the municipality and what actions would
8 need to be taken by the municipality to achieve compliance;

9 (ii) The fiscal impact incurred by the municipality in its efforts undertaken and actions
10 which would need to be taken by the municipality to achieve compliance;

11 (iii) The health and environmental impact of a reduction in the required recycling and
12 diversion rates; and

13 (iv) Such other matters as the commission determines is relevant.

14 (3) Any appeal of a decision of the resource recovery corporation on the recycling and
15 diversion rates, or upon a finding by the corporation that the municipality is not reaching its
16 yearly goals, shall be governed by the state's administrative procedures act, as set forth in chapter
17 35 of title 42. In addition, if a municipality and the corporation are unable to develop and adopt a
18 recovery plan, the matter shall be submitted to mandatory arbitration which shall be conducted
19 pursuant to the procedures established by the American Arbitration Association. Any party shall
20 be entitled to appeal a decision reached by this arbitration pursuant to the state's administrative
21 procedures act.

22 (4) The provisions of this section shall not prohibit the resource recovery corporation
23 from assessing charges it would assess pursuant to its contract with the municipality or from
24 taking other actions that could be taken regardless of whether the municipality is in compliance
25 with the required recycling and diversion rates. This includes, but is not limited to, the amount of
26 the tipping fee charged pursuant to §23-19-13.

27 SECTION 2. Section 23-19-13 of the General Laws in Chapter 23-19 entitled "Rhode
28 Island Resource Recovery Corporation" is hereby amended to read as follows:

29 **23-19-13. Municipal participation in state program.**

30 (a)(1) Any person or municipality which intends to transfer, treat, or dispose of solid
31 waste originating or collected within the state, or which intends to make arrangements to do so,
32 shall utilize, exclusively, a system or facility designated by the corporation as provided under this
33 chapter. All transfer stations in existence as of December 1, 1986 are empowered so long as they
34 maintain the appropriate license to continue their operations, and the corporation shall not

1 exercise its powers under this chapter to compete with their operation and activity. No
2 municipality shall have power to engage in, grant any license, or permit for or enter into any
3 contract for the collection, treatment, transportation, storage, or disposal of solid waste, and no
4 municipality or any person shall engage in any activities within the state, including disposal of
5 solid waste, which would impair the ability of the corporation to meet its contractual obligations
6 to its bondholders and others, or which would be in competition with the purposes of the
7 corporation as provided in this chapter. The corporation shall not be empowered to engage in the
8 transportation, transfer, or storage of solid waste, except in temporary situations where a
9 municipality has defaulted in its obligation under this section, or in conjunction with its activities
10 at its disposal sites. Provided, however, that municipal contracts which were in existence on
11 March 1, 1985, are excepted from this requirement until expiration of the original term of the
12 contract or the expiration of any extension approved by the corporation, or sooner termination of
13 the contracts, and provided, further, that municipalities operating their own landfills on December
14 1, 1986 shall be free to continue to use the landfills until closure of the landfills. Without limiting
15 the generality of the preceding, municipalities and persons are expressly empowered to contract
16 with the corporation and/or, subject to the approval of the corporation, with a duly licensed
17 private disposal facility for the disposal of solid wastes. The approval shall be conditioned upon a
18 finding by the board of commissioners of the corporation that any proposed contract with a
19 Rhode Island municipality or person is in conformity with the statewide resource recovery system
20 development plan and this chapter, and that the proposed contract will not impair the ability of
21 the corporation to meet its contractual obligations to its bondholders and others. The contracts
22 may have a maximum total term, including all renewals, of up to fifty (50) years.

23 (2) The corporation shall charge fees for its solid waste management services that,
24 together with other revenues available to the corporation, will, at a minimum, be sufficient to
25 provide for the support of the corporation and its operations on a self-sustaining basis, including
26 debt service on its bonds and other obligations.

27 (b) Insofar as the provisions of this chapter are inconsistent with the provisions of any
28 other laws of this state, general, special, or local, restricting the power of any municipality to
29 enter into long term contracts with the corporation, the provisions of this chapter shall be
30 controlling. The corporation shall provide suitable and appropriate assistance to communities
31 under these circumstances. Notwithstanding the preceding, if the corporation deems it desirable,
32 it may from time to time permit municipalities to contract among themselves for the disposal of
33 their wastes.

34 (c) Municipalities, along with private producers of waste which contract with the

1 corporation for disposal of their wastes, shall continue to be free to make their own arrangements
2 for collection of wastes at the source and/or the hauling of wastes to the designated processing
3 and/or transfer stations, so long as those arrangements are in compliance with the provisions of
4 chapter 18.9 of this title and with this chapter, and any municipal license relating thereto.

5 (d) All municipalities and state agencies which are participants in the state waste disposal
6 program shall initiate a separation and recycling program within one year after the date on which
7 the resource recovery facility utilized by that municipality or agency is operational and accepting
8 waste for incineration.

9 (e)(1) The corporation and any municipality may enter into a contract or contracts
10 providing for or relating to the disposal of solid waste originating in the municipality and the cost
11 and expense of the disposal.

12 (2) The contract may be made with or without consideration and for a specified or
13 unspecified time not to exceed fifty (50) years, and on any terms and conditions which may be
14 approved by the municipality and which may be agreed to by the corporation in conformity with
15 its contracts with the holders of any bonds or other obligations. Subject to the contracts with the
16 holders of bonds, the municipality is authorized and directed to do and perform any and all acts or
17 things necessary, convenient, or desirable to carry out and perform the contract and to provide for
18 the payment or discharge of any obligation under the contract in the same manner as other
19 obligations of the municipality.

20 (3) All municipalities that contract with the corporation for the disposal of solid waste
21 shall prepare as an addendum to its fiscal year 2010 contract with the corporation and any
22 contracts with the corporation for the subsequent years a plan that includes a description of the
23 process by which thirty-five percent (35%) of its solid waste will be recycled and fifty percent
24 (50%) of its solid waste will be diverted beginning July 1, 2012. This addendum shall include a
25 residential and municipal waste stream evaluation, a plan for the reduction of solid waste and
26 recyclables generated and the process by which recyclable materials are to be segregated. The
27 corporation shall have the right to execute or deny execution of the municipal solid waste and
28 recycling services contract pending approval of the addendum. Once the corporation approves
29 this addendum, the municipality must implement the plan and report on the results annually to the
30 corporation. The corporation shall enforce the provisions of this section pursuant to subdivision
31 23-19-13(g)(3). [Provided, the provisions of § 23-18.9-1\(d\) shall control over any provisions to the](#)
32 [contrary in this section.](#)

33 (4) The corporation shall notify every city or town that it contracts with as to the
34 addendum requirements that must be included in contracts to recycle thirty-five percent (35%)

1 and divert fifty percent (50%) of solid waste beginning July 1, 2012.

2 (f) The municipalities and the state have shared responsibility for the payment of the cost
3 of municipal solid waste disposal. The state will pay its share of the cost of the solid waste
4 disposal services to be provided by the corporation to the municipalities at its solid waste
5 management facilities and its central landfill in the town of Johnston, and at any back-up facility
6 which the corporation is required to provide, by providing solid waste disposal operating
7 subsidies as provided in subsections (i) and (j).

8 (g)(1) The corporation shall charge each municipality with which it has a long-term
9 contract for solid waste disposal services a tipping fee per ton of source separated solid waste
10 excluding separated recyclable materials, sludge, and demolition debris delivered to any
11 corporation facility computed in accordance with this subsection. For purposes of this chapter,
12 "fiscal year" shall mean the twelve-month period, July 1 to June 30. The municipal tipping fee
13 shall be equal to one hundred seven and one-half percent (107.5%) of the prior fiscal year's
14 municipal tipping fee through the end of the 2009 fiscal year. One dollar and ten cents (\$1.10) per
15 ton on all garbage, including recycled garbage, collected by the corporation as tipping fee shall be
16 paid to the town of Johnston. In addition to any other fees the corporation shall also charge a
17 three dollar (\$3.00) tipping fee per vehicle. Any vehicle carrying municipal solid waste shall be
18 exempt from this three dollar (\$3.00) tipping fee. All fees collected shall be paid to the town of
19 Johnston on a biannual basis. No tipping fee shall be charged for recyclable materials delivered to
20 a recycling facility provided by or through the corporation.

21 (2) Notwithstanding the provisions of subdivision (g)(1), the municipal tipping fee may
22 be increased, if, due to the commencement of operation of a new resource recovery facility during
23 the previous fiscal year, the state subsidy as calculated pursuant to subsection (i), not considering
24 landfill revenues and losses, is projected to be greater than the state subsidy projected by the
25 corporation and the department of administration when the projections were officially accepted
26 by the corporation on the basis of contracts entered into for the initial resource recovery facility.
27 The amount by which the projected state subsidy exceeds the original projections will be
28 apportioned between the state and the municipalities in the same ratio as the state subsidy for the
29 previous year divided by the number of tons of municipal solid waste processed by the
30 corporation bears to the municipal tipping fee for that year. The increased municipal tipping fee
31 herein provided shall be subject to the same escalation factor as the municipal tipping fee set forth
32 above.

33 (3) The corporation shall establish in the contract, the maximum amount of municipal
34 solid waste that each municipality will be entitled to deliver to the corporation at the municipal

1 tipping fee. Solid waste in excess of the contract amount will be charged to the municipality at the
2 non-municipal rate. In determining the maximum amount of municipal solid waste which will
3 qualify for the municipal tipping fee, the corporation shall consider the municipality's solid waste
4 per capita average, the statewide solid waste per capita average, and any other factors that it shall
5 deem appropriate.

6 (4) Seaweed collected and removed by a municipality shall be deemed "yard waste" for
7 purposes of this chapter and any rules, regulations and/or plans promulgated by the corporation
8 pursuant to this chapter, and shall be accepted by the corporation at the same rate and cost as all
9 other municipal yard waste.

10 (h) The corporation, after the initial resource recovery facility becomes operational, shall
11 charge each non-municipal user of its facilities a fee per ton equal to the projected annual
12 resource recovery system cost less energy revenues and interest earnings on bond reserve funds,
13 if any, divided by the projected tons to be processed by the corporation at its resource facilities
14 for the year. Landfill costs shall not be considered in the calculation unless landfill costs exceed
15 revenues generated at the landfills; in those cases, excess landfill costs will be added to the
16 system costs.

17 (i) The annual state subsidy for the cost of disposal of municipal solid waste shall be
18 calculated for each fiscal year or portion of each fiscal year according to the following formula:
19 The annual state subsidy shall equal the total projected annual resource recovery system costs
20 (minus costs associated with the central landfill) for the next fiscal year less the sum of the
21 following: (1) projected resource recovery system revenues for the year; and (2) projected landfill
22 revenues; provided, however, that in the event that the landfill is projected to operate at a loss, the
23 amount of the loss shall be added to the subsidy.

24 (j)(1) On or before October 1 of each year, the corporation shall submit a budget to the
25 director of administration for the succeeding fiscal year using actual resource recovery system
26 revenues and costs, and the audit of the preceding fiscal year prepared by the corporation's
27 independent auditors and accepted by the auditor general. On or before December 1 of each year,
28 the director of administration, in consultation with the corporation, shall review the budget of the
29 corporation and shall determine and certify the annual state subsidy for the succeeding fiscal year
30 to the governor who shall submit to the general assembly printed copies of a budget which shall
31 include the state subsidy as previously determined in this subsection. The state subsidy
32 appropriation shall be on a system basis but shall contain specific appropriations for each
33 resource recovery facility. If the amount appropriated exceeds the amount needed for a specific
34 facility, the corporation, with the approval of the director of administration, may reallocate the

1 appropriated but unadvanced funds to other corporation facilities or costs. If the audit prepared by
2 the corporation's independent auditors indicates that the amounts appropriated and disbursed to
3 the corporation as a subsidy were in excess of the amounts which would have been required for
4 the year if actual resource recovery system revenues and costs had been used in the calculation of
5 the subsidy, the excess shall be credited against the current fiscal year's subsidy.

6 (2) At any time, if the corporation determines that the state subsidy will be insufficient to
7 discharge the corporation's obligations for the current fiscal year, it shall request, in writing, to
8 the director of administration for a supplemental appropriation. After review, the director of
9 administration will recommend to the governor additional funding for the corporation, and the
10 governor after further review, shall submit a supplemental appropriation bill request for the funds
11 to the general assembly.

12 (3) From the appropriations made by the general assembly, the state controller is
13 authorized and directed to draw his or her orders upon the general treasurer every month for the
14 payment of those sums that may be required upon receipt by him or her of properly authenticated
15 vouchers.

16 (k) If, in any fiscal year, the appropriation for the state subsidy is not made and if the
17 corporation has insufficient other funds to discharge its obligations to holders of its bonds and
18 notes as certified by the state auditor general, the corporation shall be empowered to charge both
19 municipal and non-municipal users whatever fees are necessary to discharge its obligations to
20 holders of its bonds and notes, and the municipal tipping fee set forth in subsection (g) shall not
21 be applicable for the fiscal year.

22 (l) On or after the date established for separation of recyclable solid waste in the
23 statewide plan for separation of recyclables by the department of environmental management,
24 only segregated solid waste shall be accepted at the corporation's facilities.

25 (m) Costs associated with participation in the state program shall not constitute state
26 mandated costs under § 45-13-7.

27 SECTION 3. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO HEALTH AND SAFETY -- REFUSE DISPOSAL

1 This act would provide that effective July 1, 2019, a municipality which was not in
2 compliance with the state's recycling and diversion rates for solid waste would enter into a
3 recovery plan with the resource recovery corporation to attain those rates within three (3) years.
4 The act would further provide that no financial penalties or denial of access to the corporation's
5 facilities would be imposed during those three (3) years so long as the municipality was meeting
6 the yearly goals set forth in the plan. The act would also provide that a municipality could petition
7 the resource recovery corporation to be granted a reduction in the required rates for solid waste
8 recycling and diversion.

9 This act would take effect upon passage.

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