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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2019

A N A C T

RELATING TO WATERS AND NAVIGATION - THE CLIMATE CHANGE COASTAL
ADAPTATION TRUST FUND

Introduced By: Senator Erin Lynch Prata

Date Introduced: February 27, 2019

Referred To: Senate Environment & Agriculture

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 46-23.1-3 of the General Laws in Chapter 46-23.1 entitled "The
2 Coastal and Estuary Habitat Restoration Program and Trust Fund" is hereby amended to read as
3 follows:

4 **46-23.1-3. The Rhode Island coastal and estuarine habitat restoration trust fund.**

5 (a) Establishment. There is established within the coastal resources management council
6 a Rhode Island coastal and estuarine habitat restoration trust fund (the "trust"). On July 1, 2002,
7 July 1, 2004 and each July 1st thereafter, two hundred and fifty thousand dollars (\$250,000) of
8 the fees collected under the uniform oil spill response and prevention statute (§ 46-12.7-4.1) shall
9 be deposited into the trust. On July 1, 2019, and each July 1 thereafter, two hundred fifty
10 thousand dollars (\$250,000) of the fees collected under the climate change coastal adaptation fee
11 (§46-23.3-9) shall be deposited into the trust. The trust shall be available for disbursement by the
12 council in accordance with the restrictions and purposes of this chapter and subject to an annual
13 appropriation by the legislature. The trust may also receive federal, state, municipal, and private
14 grants, gifts, or donations. Funds in the trust shall not be used for mitigating any current, planned
15 or future projects that degrade, fill, or otherwise destroy coastal or estuarine habitats. Funds in the
16 trust shall not be used to fulfill any liability for restoration required by any local, state or federal
17 agency pursuant to an environmental or public health enforcement action.

18 (b) Funding of estuary and coastal habitat restoration activities. Factors to be taken into

1 account by the technical committee for the purposes of granting monies for estuary and coastal
2 habitat restoration activities, determining the eligibility of an estuary and coastal habitat
3 restoration projects for financial assistance, and in prioritizing the selection of estuary and coastal
4 habitat restoration projects by the technical committee shall include, but need not be limited to:

5 (1) Consistency with the state estuary and coastal habitat restoration strategy, the
6 Narragansett Bay comprehensive conservation and management plan, the state coastal nonpoint
7 pollution control plan, the coastal resources management program, the department of
8 environmental management regulations, and pertinent elements of the state guide plan;

9 (2) The ability of the applicant to provide adequate personnel funding, and authority to
10 carry out and properly maintain the estuary and coastal habitat restoration activity;

11 (3) The proposed monitoring plan to ensure that short-term and long-term restoration
12 goals are achieved;

13 (4) The effectiveness of any nonpoint source pollution management efforts upstream and
14 the likelihood of re-impairment;

15 (5) Whether the estuary and coastal habitat restoration activity can be shown to replace
16 habitat losses that benefit fish and wildlife resources;

17 (6) Potential water quality improvements;

18 (7) Potential improvements to fish and wildlife habitats for species which are identified
19 as rare or endangered by the Rhode Island Natural History Survey or the federal Endangered
20 Species Act [16 U.S.C. § 1531 et seq.];

21 (8) The level and extent of collaboration by partners (e.g., municipality, nongovernment
22 organization, watershed council, federal agency, etc.); and

23 (9) Potential direct economic benefit to a community or the state.

24 SECTION 2. Title 46 of the General Laws entitled "WATERS AND NAVIGATION" is
25 hereby amended by adding thereto the following chapter:

26 CHAPTER 23.3

27 THE OCEAN STATE CLIMATE ADAPTATION AND RESILIENCE FUND

28 **46-23.3-1. Purpose and findings.**

29 (a) Purpose. To enable cities and towns and the state to apply for grants awarded for
30 projects that invest in measures that adapt infrastructure on public lands to the impacts of climate
31 change to protect or enhance natural systems and habitats and to improve the quality of life and
32 economic prosperity of the citizens of the state.

33 (b) Findings.

34 (1) The findings and purpose set forth in § 46-23.1-1 are fully applicable and adopted

1 herein.

2 (2) The production, transport and use of fossil fuels have significant impacts on the
3 environment.

4 (3) The impacts of climate change upon Rhode Island's built and natural environments
5 are wide-ranging, discernible and documented, and, in many cases growing in severity and
6 include sea level rise, coastal erosion, flooding and storm surge.

7 (4) As of 2016, the range in sea level rise change is projected by the National Oceanic
8 and Atmospheric Administration to be a maximum of approximately one foot (1') in 2035, two
9 feet (2') in 2050 and up to nine feet (9') by 2100.

10 (5) Annual precipitation has increased by two (2") inches since 1950 and more intense
11 rainfall is flooding low-lying areas and threatening public infrastructure.

12 (6) Climate change has and will continue to pose significant risks for state and municipal
13 infrastructure and our environment, public health, welfare, and economic well-being.

14 (7) Providing areas for coastal and estuarine habitats to migrate is essential to preserving
15 coastal and marine wildlife resources.

16 (8) Ecosystem services that natural environments provide (e.g. dampening of wave
17 energy, flood storage, etc.) are at risk due to climate change and protecting natural systems is
18 vital to protecting built infrastructure and is cost effective.

19 (9) Rhode Island infrastructure is at risk and the state must begin to plan and implement
20 projects to protect it.

21 (10) Reducing the vulnerability of our infrastructure is vital to the economic prosperity
22 and quality of life of the citizens of the state.

23 (11) The state, and Rhode Island cities and towns, need assistance in addressing the
24 impacts of climate change including removing vulnerable infrastructure.

25 **46-23.3-2. Definitions.**

26 The definitions set forth in § 46-23.1-2, unless modified herein, shall also apply to the
27 interpretation of this chapter as if fully set forth herein. For the purposes of this chapter, the
28 following definitions shall apply:

29 (1) "Adaptation and resilience projects" are those projects on public land, as defined in
30 subsection (7) of this section that protect or enhance natural systems and habitats and are
31 proposed in a response to climate change impacts as defined in subsection (2) of this section.

32 Adaption and resilience projects include those projects that reduce the vulnerability of low-lying
33 infrastructure on public land through measures that include removal, relocation, and redesign of
34 infrastructure, regrading of banks and revegetation, acquisition of that area of land necessary to

1 maintain public access, and preserving or securing lateral access along the shoreline.

2 (2) "Climate change impacts" in Rhode Island includes, but are not limited to, sea level
3 rise, coastal erosion, flooding and storm surge.

4 (3) "Council" means the coastal resources management council.

5 (4) "Department" means the department of environmental management.

6 (5) "Director" means the director of the department of environmental management.

7 (6) "Infrastructure" means and includes roads, parking lots and other paved surfaces,
8 structural shoreline protection facilities, buildings, water control structures, other structures, and
9 remnants of coastal development.

10 (7) "Public land(s)" means property owned by state or municipal governments, public and
11 private lands dedicated to public use, and lands that provide access to shorelines and riverbanks.
12 Public lands include properties where the state or municipality holds an easement for public
13 purposes.

14 (8) "Shoreline protection structures" means and includes revetments, bulkheads, seawalls
15 and floodwalls, groins, breakwaters, jetties, and other structures, the purpose or effect of which is
16 to control the erosion of coastal or river features, and includes any sheet pile walls, concrete or
17 stone walls.

18 **46-23.3-3. Establishment - The Ocean State climate adaptation and resilience fund.**

19 (a) Establishment. There is established within the department of environmental
20 management and the coastal resources management council, the ocean state climate adaptation
21 and resilience fund (the "OSCAR fund").

22 (b) OSCAR trust fund grants. Factors to be taken into account by the technical committee
23 for the purposes of granting monies to municipalities and the state for OSCAR grants,
24 determining the eligibility of projects for financial assistance, and in prioritizing the selection of
25 projects by the technical committee shall include, but need not be limited to:

26 (1) Consistency with the following where applicable: the council's projections for sea
27 level rise, the coastal habitat restoration strategy, the state coastal nonpoint pollution control plan,
28 Federal Flood Risk Management Standards, pertinent elements of the state guide plan, the goals
29 of the executive climate change coordinating council (EC4), and strict compliance with the
30 coastal resources management program and the department of environmental management
31 regulations;

32 (2) The ability and authority of the applicant to carry out and properly maintain the
33 adaptation project;

34 (3) Whether the project will enhance public access;

- 1 (4) The severity to, or the risk or extent of, infrastructure degradation on public land;
2 (5) The extent of the use by the public of the land;
3 (6) The proposed milestones to ensure that the project is completed as designed and
4 approved;
5 (7) Whether the adaptation project can also be shown to create or replace habitat losses
6 that benefit fish and wildlife resources;
7 (8) Potential water quality improvements;
8 (9) Potential improvements to fish and wildlife habitats for species which are identified
9 as rare or endangered by the Rhode Island natural history survey or the Federal Endangered
10 Species Act [16 U.S.C. §1531 et seq.];
11 (10) The level and extent of collaboration by partners (e.g., municipality, nongovernment
12 organization, watershed council, federal agency, etc.); and
13 (11) Overall potential benefits to the public and estimated length of time frame of benefit.

14 **46-23.3-4. Eligible and Ineligible projects.**

- 15 (a) Funds in the ocean state climate adaptation and resilience (OSCAR) fund shall be
16 used solely for adaptation projects as defined in § 46-23.3-2.
17 (b) Funds in the OSCAR fund shall not be used for:
18 (1) Mitigating any current, planned or future projects that degrade, fill, or otherwise
19 destroy coastal, estuarine or riverine habitats;
20 (2) Fulfilling any liability for restoration required by any local, state or federal agency
21 pursuant to an environmental or public health enforcement action; or
22 (3) Elevating or replacing infrastructure, or constructing new infrastructure, in an existing
23 coastal location that is experiencing climate change impact as defined in § 46-23.3-2.
24 (4) Constructing new shoreline protection structures; or
25 (5) Constructing roads or bridges.

26 **46-23.3-5. Allocation of the trust.**

- 27 Funds from the OSCAR trust shall be used to carry out the purposes of this chapter as
28 follows:
29 (1) The administrative expenses required to carry out the activities of the program as
30 described in this chapter not to exceed fifty thousand dollars (\$50,000) per agency. The
31 department and the council shall be responsible for submitting annual budget requests for its
32 administrative and implementation costs of the program;
33 (2) The design, planning, engineering, construction, and monitoring of adaptation
34 projects as described in this chapter; and

1 (3) The climate change coastal adaptation projects that are approved by the department
2 and the council upon recommendation of the technical advisory committee. Only grants approved
3 through the process established by the agencies shall be eligible for funding under this program.

4 **46-23.3-6. Technical advisory committee.**

5 Members of the technical advisory committee shall include representatives from the
6 department, the council, statewide planning, and Rhode Island emergency management authority.
7 The technical advisory committee shall serve as an advisory board to the department, council and
8 the program staff throughout this process.

9 **46-23.3-7. Disbursement process.**

10 (a) The department and the council shall establish and execute an annual process for the
11 solicitation, evaluation and award of grants for projects that meet the requirements set forth in in
12 this chapter.

13 (b) The department and the council shall submit to the governor and the general assembly
14 during annual budget preparations a list of adaptation project proposals that have received a
15 positive review by the technical advisory committee and require funds from the trust to proceed
16 with the design, planning, construction or monitoring during the ensuing year.

17 (c) Nothing contained in this chapter is intended to abrogate or affect the existing powers
18 of the department of environmental management or the coastal resources management council.

19 **46-23.3-8. Financing of the OSCAR fund.**

20 (a) The fund shall consist of the following sources:

21 (1) Sums the legislature may appropriate;

22 (2) Monies received from federal, state, or other sources, including bond funds, for the
23 purpose of climate adaptation;

24 (3) Monies received from any private donor for the OSCAR fund;

25 (4) The fee required pursuant to § 46-23.3-9; and

26 (5) Any interest earned on the monies in the fund.

27 **46-23.3-9. Uniform climate change adaptation fee.**

28 (a) A uniform climate change adaptation fee in an amount not exceeding five cents (\$.05)
29 for each barrel of petroleum products, as set by the director pursuant to subsection (d) of this
30 section, shall be imposed upon every person owning petroleum products at the time the petroleum
31 products are received at a marine terminal within this state by means of a vessel from a point of
32 origin outside this state. The fee shall be remitted to the division of taxation on the thirtieth day of
33 each month based upon the number of barrels of petroleum products received during the
34 preceding month.

1 (b) Every owner of petroleum products shall be liable for the fee until it has been paid to
2 the state, except that payment to a marine terminal operator registered under this chapter is
3 sufficient to relieve the owner from further liability for the fee; provided, however, that the fee for
4 asphalt products and asphalt derivatives shall be one cent (\$.01) per barrel of asphalt products or
5 derivatives.

6 (c) Whenever the director, in consultation with the department and the division of
7 taxation, estimates that the amount in either fund will reach the amount specified in subsection (e)
8 of this section, and the money in the fund is not required for the purposes specified in § 46-23.3-
9 1, the director shall instruct the division of taxation to cease collecting the fee.

10 (d) The division of taxation, except for the fee set out in subsection (b) of this section,
11 shall not set the amount of the fee at less than five cents (\$0.05) for each barrel of petroleum
12 products or crude oil, unless the director finds that the assessment of a lesser fee will cause the
13 fund to reach the designated amount within six (6) months.

14 (e) For the purposes of this chapter, "designated amount" means an amount equal to ten
15 million dollars (\$10,000,000), adjusted for inflation after January 1, 2019, according to an index
16 which the director may reasonably choose.

17 (f) All fees collected pursuant to this section shall be deposited in the rivers and coastal
18 adaptation fund, and shall be disbursed according to the purposes expressed in § 46-23.3-1.

19 (g) Notwithstanding the provisions of subsection (f) of this section, on July 1, 2019 and
20 each July 1 thereafter, two hundred fifty thousand dollars (\$250,000) of the fees collected under
21 this section shall be deposited into the coastal and estuarine habitat restoration trust fund (the
22 "trust").

23 **46-23.3-10. Regulations.**

24 The council and the director may adopt all rules and regulations necessary for the
25 administration and enforcement of this chapter.

26 SECTION 3. This act shall take effect on July 1, 2019.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO WATERS AND NAVIGATION - THE CLIMATE CHANGE COASTAL
ADAPTATION TRUST FUND

1 This act would establish Ocean State Climate Adaptation and Resilience Fund (OSCAR)
2 which provides grants to fund projects that adapt infrastructure on public lands to address impacts
3 of climate change; identifies eligible/ineligible projects, allocation, disbursements, and financing
4 of the fund.

5 This act would take effect on July 1, 2019.

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