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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 - RHODE ISLAND INFRASTRUCTURE
BANK

Introduced By: Senators DiPalma, Seveney, Euer, and Felag

Date Introduced: June 20, 2019

Referred To: Senate Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 46-12.2-2 and 46-12.2-8 of the General Laws in Chapter 46-12.2
2 entitled "Rhode Island Infrastructure Bank" are hereby amended to read as follows:

3 **46-12.2-2. Definitions.**

4 As used in this chapter, unless the context clearly indicates otherwise, the following
5 words and phrases shall have the following meanings:

6 (1) "Agency" means the Rhode Island clean water finance agency, and, effective
7 September 1, 2015, and thereafter, shall mean the Rhode Island infrastructure bank;

8 (2) "Approved project" means any project or portion thereof that has been issued a
9 certificate of approval by the department for financial assistance from the agency, and also
10 includes any project approved for financial assistance from the agency in accordance with state
11 law, and, furthermore, shall include water pollution abatement projects funded outside of the
12 water pollution control revolving fund, the Rhode Island water pollution control revolving fund,
13 or the local interest subsidy trust fund, without the requirement of the issuance of a certificate of
14 approval; and, furthermore, shall include resiliency related infrastructure projects, and projects
15 which may, subject to compliance with all state and federal requirements, include state and
16 federal infrastructure located within the state of Rhode Island;

17 (3) "Board" means board of directors of the agency;

18 (4) "Bond act" means any general or special law authorizing a local governmental unit to

1 incur indebtedness for all or any part of the cost of projects coming within the scope of a water
2 pollution abatement project, or for other projects related to this chapter, including but not limited
3 to, § 45-12-2;

4 (5) "Bonds" means bonds, notes, or other evidence of indebtedness of the agency;

5 (6) "Certificate of approval" means the certificate of approval contemplated by § 46-12.2-
6 8;

7 (7) "Chief executive officer" means the mayor in any city, the president of the town
8 council in any town, and the executive director of any authority or commission, unless some other
9 officer or body is designated to perform the functions of a chief executive officer under any bond
10 act or under the provisions of a local charter or other law;

11 (8) "Clean Water Act" or "act" means the Federal Water Pollution Control Act, act of
12 June 30, 1948, ch. 758, as added Oct. 18, 1972, Pub. L. No. 92-500, 86 Stat. 896, as added Dec.
13 27, 1977, Pub. L. No. 95-217, 91 Stat. 1566 (codified at 33 U.S.C. § 1251 et seq., as amended and
14 as hereafter amended from time to time);

15 (9) "Corporation" means any corporate person, including, but not limited to: corporations,
16 societies, associations, limited liability companies, partnerships and sole proprietorships;

17 (10) "Cost" as applied to any approved project, means any or all costs, whenever
18 incurred, approved by the agency in accordance with § 46-12.2-8, of planning, designing,
19 acquiring, constructing, and carrying out and placing the project in operation, including, without
20 limiting the generality of the foregoing, amounts for the following: planning, design, acquisition,
21 construction, expansion, improvement, and rehabilitation of facilities; acquisition of real or
22 personal property; demolitions and relocations; labor, materials, machinery and equipment;
23 services of architects, engineers, and environmental and financial experts and other consultants;
24 feasibility studies, plans, specifications, and surveys; interest prior to and during the carrying out
25 of any project and for a reasonable period thereafter; reserves for debt service or other capital or
26 current expenses; costs of issuance of local governmental obligations or non-governmental
27 obligations issued to finance the obligations including, without limitation, fees, charges, and
28 expenses and costs of the agency relating to the loan evidenced thereby, fees of trustees and other
29 depositories, legal and auditing fees, premiums and fees for insurance, letters or lines of credit or
30 other credit facilities securing local governmental obligations or non-governmental obligations
31 and other costs, fees, and charges in connection with the foregoing; and working capital,
32 administrative expenses, legal expenses, and other expenses necessary or incidental to the
33 aforesaid, to the financing of a project and to the issuance therefor of local government
34 obligations under the provisions of this chapter;

1 (11) "Department" means the department of environmental management;

2 (12) "Financial assistance" means any form of financial assistance provided by the
3 agency to a local governmental unit, person, or corporation in accordance with this chapter for all
4 or any part of the cost of an approved project, including, without limitation: grants, temporary and
5 permanent loans, with or without interest, guarantees, insurance, subsidies for the payment of
6 debt service on loans, lines of credit, and similar forms of financial assistance; provided,
7 however, notwithstanding the foregoing, for purposes of capitalization grant awards made
8 available to the agency, pursuant to the American Recovery and Reinvestment Act of 2009 (P.L.
9 111-5), or as otherwise required in connection with other capitalization grant awards made
10 available to the agency, financial assistance shall also include principal forgiveness and negative
11 interest loans;

12 (13) "Fully marketable form" means a local governmental obligation in form satisfactory
13 to the agency duly executed and accompanied by an opinion of counsel of recognized standing in
14 the field of municipal law whose opinions have been and are accepted by purchasers of like
15 obligations to the effect that the obligation is a valid and binding obligation of the local
16 governmental unit issuing the obligation, enforceable in accordance with its terms;

17 (14) "General revenues", when used with reference to a local governmental unit, means
18 revenues, receipts, assessments, and other moneys of the local governmental unit received from
19 or on account of the exercise of its powers and all rights to receive the same, including without
20 limitation:

21 (i) Taxes;

22 (ii) Wastewater system revenues;

23 (iii) Assessments upon or payments received from any other local governmental unit that
24 is a member or service recipient of the local governmental unit, whether by law, contract, or
25 otherwise;

26 (iv) Proceeds of local governmental obligations and loans and grants received by the
27 local governmental unit in accordance with this chapter;

28 (v) Investment earnings;

29 (vi) Reserves for debt service or other capital or current expenses;

30 (vii) Receipts from any tax, excise, or fee heretofore or hereafter imposed by any general
31 or special law all or a part of the receipts of which are payable or distributable to or for the
32 account of the local governmental unit;

33 (viii) Local aid distributions; and

34 (ix) Receipts, distributions, reimbursements, and other assistance received by or for the

1 account of the local governmental unit from the United States or any agency, department, or
2 instrumentality thereof;

3 (15) "Loan" means a loan by the agency to a local governmental unit, or person, or
4 corporation for costs of an approved project, including, without limitation, temporary and
5 permanent loans, and lines of credit;

6 (16) "Loan agreement" means any agreement entered into by the agency with a local
7 governmental unit, person, or corporation pertaining to a loan, other financial assistance, local
8 governmental obligations, or non-governmental obligations, including, without limitation: a loan
9 agreement, trust agreement, security agreement, reimbursement agreement, guarantee agreement,
10 financing lease agreement, appropriation agreement, or similar instrument;

11 (17) "Local aid distributions" means receipts, distributions, reimbursements, and other
12 assistance payable by the state to or for the account of a local governmental unit, except such
13 receipts, distributions, reimbursements, and other assistance restricted by law to specific
14 statutorily defined purposes;

15 (18) "Local governmental obligations" means bonds, notes, financing lease obligations,
16 appropriation obligations, and other evidences of indebtedness in fully marketable form issued by
17 a local governmental unit to evidence a loan or other financial assistance, from the agency in
18 accordance with this chapter or otherwise as provided herein;

19 (19) "Local governmental unit" means any town, city, district, commission, agency,
20 authority, board, bodies politic and corporate, public corporation, or other political subdivision or
21 instrumentality of the state or of any political subdivision thereof, including the Narragansett Bay
22 commission; and, for purposes of dam safety or dam maintenance projects, any person seeking
23 financial assistance as a joint applicant with any of the above entities;

24 (20) "Local interest subsidy trust fund" means the local interest subsidy trust fund
25 established under § 46-12.2-6;

26 (21) "Non-governmental obligations" means bonds, notes, or other evidences of
27 indebtedness in fully marketable form issued by a person or corporation to evidence a loan, or
28 other financial assistance, from the agency in accordance with this chapter or otherwise as
29 provided herein;

30 (22) "Person" means any natural person;

31 (23) "Priority determination system" means the system by which water pollution
32 abatement projects are rated on the basis of environmental benefit and other criteria for funding
33 assistance pursuant to rules and regulations promulgated by the department as they may be
34 amended from time to time;

1 (24) "Projected energy efficiency savings" means, at the time a loan agreement is entered
2 into between the agency and a local governmental unit, the savings projected to be derived from
3 the implementation of energy efficient and renewable-energy upgrades to public buildings, as
4 determined in accordance with the rules and regulations promulgated by the Rhode Island
5 infrastructure bank pursuant to this chapter;

6 (25) "Qualified energy conservation bond" or "QECCB" means those bonds designated by
7 26 U.S.C. § 54D;

8 (26) "Revenues", when used with reference to the agency, means any receipts, fees,
9 payments, moneys, revenues, or other payments received or to be received by the agency in the
10 exercise of its corporate powers under this chapter, including, without limitation: loan
11 repayments, payments on local governmental obligations, non-governmental obligations, grants,
12 aid, appropriations, and other assistance from the state, the United States, or any agency,
13 department, or instrumentality of either or of a political subdivision thereof, bond proceeds,
14 investment earnings, insurance proceeds, amounts in reserves, and other funds and accounts
15 established by or pursuant to this chapter or in connection with the issuance of bonds, including,
16 without limitation, the water pollution control revolving fund, the Rhode Island water pollution
17 control revolving fund, and the local interest subsidy fund, and any other fees, charges or other
18 income received or receivable by the agency;

19 (27) "Rhode Island water pollution control revolving fund" means the Rhode Island water
20 pollution control revolving fund established pursuant to § 46-12.2-6;

21 (28) "Trust agreement" means a trust agreement, loan agreement, security agreement,
22 reimbursement agreement, currency or interest rate exchange agreement, or other security
23 instrument, and a resolution, loan order, or other vote authorizing, securing, or otherwise
24 providing for the issue of bonds, loans, or local governmental obligations or non-governmental
25 obligations;

26 (29) "Wastewater system revenues" means all rates, rents, fee assessments, charges, and
27 other receipts derived or to be derived by a local governmental unit from wastewater collection
28 and treatment facilities and water pollution abatement projects under its ownership or control, or
29 from the services provided thereby, including, without limitation: proceeds of grants, gifts,
30 appropriations, and loans, including the proceeds of loans or grants awarded by the agency or the
31 department in accordance with this chapter, investment earnings, reserves for capital and current
32 expenses, proceeds of insurance or condemnation, and the sale or other disposition of property;
33 wastewater system revenues may also include rates, rents, fees, charges, and other receipts
34 derived by the local governmental unit from any water supply of distribution facilities or other

1 revenue producing facilities under its ownership or control; wastewater system revenues shall not
2 include any ad valorem taxes levied directly by the local governmental unit on any real and
3 personal property;

4 (30) "Water pollution abatement project" or "project" means any project eligible pursuant
5 to Title VI of the Clean Water Act including, but not limited to, a wastewater treatment or
6 conveyance project that contributes to removal, curtailment, or mitigation of pollution of the
7 surface water of the state, and conforms with any applicable comprehensive land use plan which
8 has been adopted or any dam safety, removal or maintenance project; it also means a project to
9 enhance the waters of the state, which the agency has been authorized by statute to participate in;
10 it also means any other project to which the agency has been authorized to provide financial
11 assistance;

12 (31) "Water pollution control revolving fund" means the water pollution control
13 revolving fund contemplated by title VI of the Water Quality Act and established under § 46-
14 12.2-6;

15 (32) "Water Quality Act" means the Water Quality Act of 1987, Pub. L. No. 100-4, 101
16 Stat. 7, 33 U.S.C. § 1251 et seq., as amended from time to time.

17 **46-12.2-8. Procedures for application, approval, and award of financial assistance.**

18 (a) Any local governmental unit, person or corporation may apply to the agency for
19 financial assistance in accordance with this chapter to finance all or any part of the cost of a water
20 pollution abatement project [or any other approved project](#). The agency shall not award financial
21 assistance [for a water pollution abatement project](#) to a local governmental unit, person or
22 corporation until and unless the department shall have issued a certificate of approval of the
23 project or portion thereof. Notwithstanding the foregoing, for water pollution abatement projects
24 funded outside of the water pollution control revolving fund, the Rhode Island water pollution
25 control revolving fund, or the local interest subsidy trust fund, the agency may provide financial
26 assistance without the requirement of the issuance of a certificate of approval, and such projects
27 shall not be required to be listed on the department's priority list as set forth in this chapter.

28 (b) If the department shall determine, in accordance with rules and regulations
29 promulgated pursuant to this chapter, that an application for financial assistance or portion thereof
30 shall be approved, it shall deliver to the agency a certificate of approval of the project or a portion
31 thereof which shall specify the project or portion thereof eligible for financial assistance and such
32 other terms, conditions and limitations with respect to the construction and operation of the
33 project as the department shall determine. The agency shall specify, among other things, the type
34 and amount of financial assistance to be provided, the costs thereof eligible for financial

1 assistance, the amounts, if any, of the financial assistance, to be provided from the water pollution
2 control revolving fund and/or the Rhode Island water pollution control revolving fund, the
3 amount, if any, of subsidy assistance to be granted from the local interest subsidy trust fund, the
4 amount, if any, of other financial assistance permitted by this chapter to be provided, and such
5 other terms, conditions, and limitations on the financial assistance, the expenditure of loan
6 proceeds, and the construction and operation of the project as the agency shall determine or
7 approve.

8 (c) Any water pollution abatement project or portion thereof included on the priority list
9 established by the department for federal fiscal year 1989 or any federal fiscal year thereafter
10 shall be eligible for financial assistance in accordance with this chapter.

11 (d) In addition to the authority provided by law, the department shall be responsible for,
12 and shall have all requisite power to, review and approve reports and plans for water pollution
13 abatement projects and approved projects, or any part thereof, for which financial assistance has
14 been applied or granted in accordance with this chapter, to enter into contracts with local
15 governmental units, persons or corporations relative to approved projects, including, without
16 limiting the generality of the foregoing, the costs of approved projects eligible for financial
17 assistance, grants, and other terms, conditions and limitations with respect to the construction and
18 operation of the project, and to inspect the construction and operation thereof of projects in
19 compliance with approved plans. Without limiting the generality of the foregoing, in connection
20 with the exercise of its powers and performance of its duties under this chapter, the department
21 shall have all the powers provided by law to the department and its director. The department shall
22 adopt rules, regulations, procedures, and guidelines to carry out the purposes of this chapter and
23 for the proper administration of its powers and duties under this chapter. The rules, regulations,
24 procedures, and guidelines shall include among other things, criteria for determining those water
25 pollution abatement projects to be approved for financial assistance (the criteria shall include the
26 priority determination system), specification of eligible costs of the projects, and provisions for
27 compliance by projects constructed in whole or in part with funds directly made available under
28 this chapter by federal capitalization grants with the requirements of the Clean Water Act, 33
29 U.S.C. § 1351 et seq., and other federal laws applicable to the project. The department shall
30 cooperate with the agency in the development of capitalization grant applications, operating
31 plans, and intended use plans for federal capitalization grant awards under title VI of the Clean
32 Water Act, 33 U.S.C. § 1381 et seq., and may enter into such agreements and other undertakings
33 with the agency and federal agencies as necessary to secure to the state the benefits of title VI of
34 the Clean Water Act, 33 U.S.C. § 1381 et seq. In order to provide for the expenses of the

1 department under this chapter, the agency shall transfer to the department for application to the
2 expenses an amount from the water pollution control revolving fund equal to the maximum
3 amount authorized by federal law, and such additional amounts as may be needed from the Rhode
4 Island water pollution control fund and from any other monies available. The agency and the
5 department shall enter into an operating agreement and amend the same, from time to time,
6 allocating their respective rights, duties, and obligations with respect to the award of financial
7 assistance and grants to finance approved projects under this chapter and establishing procedures
8 for the application, approval, and oversight of projects, financial assistance, and grants.

9 (e) Upon issuance of a certificate of approval, the agency shall award as soon as
10 practicable the financial assistance to the local governmental unit, person or corporation for any
11 approved project specified in the certificate; provided, however, the agency may decline to award
12 any financial assistance which the agency determines will have a substantial adverse effect on the
13 interests of holders of bonds or other indebtedness of the agency or the interests of other
14 participants in the financial assistance program, or for good and sufficient cause affecting the
15 finances of the agency. All financial assistance shall be made pursuant to a loan agreement
16 between the agency and the local governmental unit, person or corporation, acting by and through
17 the officer or officers, board, committee, or other body authorized by law, or otherwise its chief
18 executive officer, according to the terms and conditions of the certificate of approval and such
19 other terms and conditions as may be established by the agency, and each loan shall be evidenced
20 and secured by the issue to the agency of local governmental obligations or non-governmental
21 obligations in fully marketable form in principal amount, bearing interest at the rate or rates
22 specified in the applicable loan agreement, and shall otherwise bear such terms and conditions as
23 authorized by this chapter and the loan agreement.

24 (f) The agency shall adopt rules, regulations, procedures, and guidelines for the proper
25 administration of its financial assistance programs and the provision of financial assistance under
26 this chapter. The rules, regulations, procedures, and guidelines shall be consistent with the
27 requirements of title VI of the Clean Water Act, 33 U.S.C. § 1381 et seq., and any rules,
28 regulations, procedures, and guidelines adopted by the department, and may include, without
29 limitation, forms of financial assistance applications, loan agreements, and other instruments, and
30 provision for submission to the agency and the department by a local governmental unit, person
31 or corporation of the information regarding the proposed water pollution abatement project, the
32 wastewater system of which it is a part, and the local governmental unit or corporation as the
33 agency or the department shall deem necessary, to determine the eligibility of a project for
34 financial assistance under this chapter, the financial feasibility of a project, and the sufficiency of

1 general revenues or wastewater system revenues to secure and pay the loan and the local
2 governmental obligations or non-governmental obligations issued to evidence the project. The
3 agency shall, no later than December 31, 2015, enter into an agreement with the Rhode Island
4 commerce corporation to ensure collaboration for brownfields and energy efficiency related
5 projects to which the agency provides financial assistance to corporations.

6 (g) Subject to the provisions of any trust agreement securing bonds of the agency, when
7 the agency shall have awarded a loan eligible for subsidy assistance from funds held by the
8 agency for the credit of the local interest subsidy trust fund, the agency shall credit to the
9 applicable account in the fund maintained in accordance with § 46-12.2-6(e), the amount, if any,
10 as provided in the loan agreement to defray all or a portion of the interest otherwise payable by
11 the local governmental unit, person or corporation on the loan.

12 (h) In addition to other remedies of the agency under any loan agreement or otherwise
13 provided by law, the agency may also recover from a local governmental unit, person or
14 corporation, in an action in superior court, any amount due the agency together with any other
15 actual damages the agency shall have sustained from the failure or refusal of the local
16 governmental unit or corporation to make the payments.

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 WATERS AND NAVIGATION - RHODE ISLAND INFRASTRUCTURE
BANK

1 This act would expand the definition of “approved project” to include resiliency related
2 infrastructure projects and projects which may include state and federal infrastructures within the
3 state of Rhode Island. This act would further prohibit the award of financial assistance for a water
4 pollution abatement project.

5 This act would take effect upon passage.

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