

2017 -- H 6103

=====
LC002445
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2017

—————
A N A C T

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

Introduced By: Representative Blake Anthony Filippi

Date Introduced: April 12, 2017

Referred To: House Corporations

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.

15 (3) "BIPCO debt obligations" means the obligations represented by and inherent in any
16 debt incurred by the Block Island power company for the purpose of financing any aspect of its
17 electric system or operations, which obligations remain outstanding in any part as of the date of
18 approval.

1 (4) "Qualified elector" means any person whose name appears on an active account with
2 the utility district. If an active account is in the name of a corporation or other entity, the owner or
3 authorized representative of such an entity shall have the right to vote as a qualified elector. No
4 qualified elector shall have more than one vote.

5 (5) "Utility district" means the Block Island utility district, a quasi-municipal corporation,
6 district and political subdivision of the state established and empowered by this chapter to:

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

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

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

11 (6) "Utility service area" means that geographic area comprising Block Island.

12 **45-67-3. Statement of purpose.**

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

16 **45-67-4. Block Island utility district established.**

17 There is hereby created a quasi-municipal corporation, district and political subdivision
18 of the state, to be known as the Block Island utility district, the boundaries of which shall be
19 coterminous with the boundaries of Block Island, Rhode Island. The utility district shall have and
20 be entitled to exercise the powers, rights and functions set forth in this chapter.

21 **45-67-5. Board of utility commissioners of the Block Island utility district**
22 **established.**

23 There is hereby created a board to be known as the board of utility commissioners of the
24 Block Island utility district. The powers of the utility district as set forth in this chapter, or
25 conferred on the utility district by operation of this chapter, shall be vested in and exercised by a
26 majority of the members of the board of utility commissioners then in office; provided, however,
27 that the board of utility commissioners in its discretion may delegate executive functions to
28 managers, by resolution, rule or otherwise.

29 **45-67-6. Membership of board of utility commissioners.**

30 (a) The board of utility commissioners shall consist of five (5) or seven (7) members as
31 determined by the bylaws of the utility district. A majority of the board shall constitute a quorum
32 and a majority of the members shall be necessary for all actions taken by the board. No vacancy
33 in the membership of the board shall impair the right of a quorum to exercise all the rights and
34 perform all the duties of the board. The initial elected members of the board of utility

1 commissioners shall consist of five (5) members, elected with staggered terms of two (2) years
2 and four (4) years. The three (3) candidates receiving the most votes will serve four (4) year
3 terms; the two (2) candidates receiving the next highest number of votes will serve two (2) year
4 terms. Thereafter, the members of the board of utility commissioners of the utility district shall be
5 elected for a term of four (4) years by ballot of qualified electors. Elections for the board of utility
6 commissioners and the mechanism for increasing or decreasing the number of commissioners can
7 occur by such means as determined by the bylaws.

8 (b) The election of the initial board of utility commissioners shall be administered by the
9 town of New Shoreham using the list of qualified electors provided by BIPCO. The town of New
10 Shoreham shall reimburse BIPCO for reasonable expenses in providing the list of qualified
11 electors and in providing other assistance in the election.

12 (c) The members of the board of utility commissioners shall be a resident, taxpayer,
13 ratepayer or spouse of a ratepayer, or the beneficial owner of a ratepayer. Such residents,
14 ratepayers and spouse, or beneficial owner of a ratepayer shall be eligible to be a candidate for
15 election to any one of the above offices; provided, however, that they shall first have filed a
16 declaration of candidacy with the secretary of the board of utility commissioners not later than
17 thirty (30) calendar days prior to the scheduled date of the election through which such person
18 seeks to be elected. In the event of a vacancy occurring on the board of utility commissioners by
19 reason of death, resignation or other cause, the board itself may select an eligible candidate to fill
20 the vacancy until the next annual election. In the event that an active account is in the name of a
21 corporation or other entity, an owner of such an entity shall also be eligible to be a candidate for
22 election to any one of the above offices.

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

- 24 (1) A chairperson;
- 25 (2) A vice chairperson;
- 26 (3) A secretary; and
- 27 (4) A treasurer.

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

31 (f) In order to ensure that the status of the utility district as a quasi-municipal corporation,
32 district and political subdivision of the state does not prejudice its ability to contribute to the
33 development of effective competition in the electricity and communications industries in the
34 state, it is specifically found and determined that:

1 (1) Strategic business planning records of the utility district (including, without
2 limitation, business plans, draft contracts, proposals, financial analyses and other similar
3 documents) shall not be subject to the disclosure requirements of chapter 2 of title 38 unless the
4 same materials in comparable circumstances in the hands of an investor-owned utility would be
5 subject to disclosure under other laws of the state; and

6 (2) Strategic business planning discussions of the board of utility commissioners,
7 including such discussions with utility district employees or consultants, are deemed to fall within
8 the circumstances defined in §42-46-5(a)(7).

9 **45-67-7. Compensation of the board – Employees of the utility district.**

10 (a) Each member of the board of utility commissioners shall be entitled to receive
11 compensation for attendance at scheduled and special meetings of the board of utility
12 commissioners, and shall be entitled to reimbursement of the actual and necessary expenses
13 incurred in the performance of their official duties. The salaries, compensation and expenses of
14 all members and officers of the board, and all employees and agents of the utility district, shall be
15 paid solely out of funds of the utility district. No part of the earnings of the utility district shall
16 inure to the benefit of any private person. Compensation rates and reimbursement policies shall
17 be allowed as provided in the by-laws of the utility district.

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

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

29 **45-67-8. Powers of the utility district.**

30 The utility district shall have the power:

31 (1) To acquire the BIPCO assets and to assume the BIPCO debt obligations. The sale by
32 voluntary purchase of such property and the assumption of such obligations shall be negotiated
33 between BIPCO and the utility district. In the event that BIPCO and the utility district agree on
34 the price, terms and conditions of such sale of property and assumption of such obligations, then

1 BIPCO shall cease to be an electric utility and shall be entitled to engage in any purpose or
2 purposes allowed to business corporations under the Rhode Island business corporations act,
3 chapter 1.2 of title 7, as same may be amended. In the event that BIPCO and the utility district are
4 unable to agree on the price, terms and conditions of such sale of personal property and
5 assumption of such obligations, then BIPCO shall continue as the electric utility servicing the
6 utility service area, and the Block Island utility district shall not function as an electric utility;

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

11 (3) To acquire real property, fixtures, and rights and interests in real property within its
12 utility service area by eminent domain except for real property owned in whole or in part by the
13 town of New Shoreham or the Block Island power company, subject to the supervision of the
14 public utilities commission in the manner prescribed in §39-1-31;

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

18 (5) To produce, purchase, acquire, distribute, and sell electricity at wholesale or retail
19 within or without its utility service area subject to franchise rights of other utilities; to lay down,
20 construct, own, operate, maintain, repair, and improve mains, pipes, towers, and other equipment
21 and facilities necessary, appropriate or useful for those purposes; and to contract with others for
22 any or all of the foregoing purposes;

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

31 (7) To acquire, own, lease, operate, maintain, repair, and expand facilities and equipment
32 necessary, appropriate, or useful to the operation of an electric utility.

33 (8) To acquire, own, lease, operate, maintain, repair, and expand facilities and equipment
34 necessary, appropriate, or useful to the operation of other utilities, including, but not limited to,

1 communications services such as Internet service, high-speed data transfer, local and long-
2 distance telephone service, community antenna television service, and to engage in the operation
3 of such utilities;

4 (9) To sue and be sued;

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

6 (11) To acquire, hold, use, lease, sell, transfer, assign, or otherwise dispose of any
7 property, real, personal, or mixed, or any interest therein, for its corporate purposes, and to
8 mortgage, pledge, or lease any such property;

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

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

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

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

22 **45-67-9. Limitation of powers.**

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

26 **45-67-10. Exemptions.**

27 (a) The exemption waiver provided by the utilities commission to the Block Island power
28 company from the terms of §39-1-27 shall also apply to the utility district and the utilities
29 commission shall have the authority to provide such other waivers from this section as may be in
30 the public interest.

31 (b) The utility district shall, from time to time, submit plans to the utilities commission on
32 retail choice as defined in §39-1-27.3. The utilities commission shall have the authority to
33 approve those plans as may be in the interests of all ratepayers of the utility district, including the
34 option of not offering retail choice. Any waiver on retail choice granted by the utilities

1 commission to the Block Island power company shall also apply to the utility district.

2 (c) The exemptions provided for the Pascoag utility district and the Block Island power
3 company under §§39-1-27.3.1, 39-1-27.12, 39-2-1.2(b), 39-2-25, 39-26.1-1 through and including
4 39-26.1-6, and chapters 1.1, 26, 26.2, 26.4, and 26.6 of title 39 shall also apply to the Block
5 Island utility district.

6 (d) As long as the utility district has a waiver from the restructuring provisions of §39-1-
7 27, then the utility district shall also be granted a waiver from the provisions of §39-1-27.6 such
8 that the employees of the utility district may be allowed to provide both electrical generation and
9 distribution services.

10 **45-67-11. Bonds.**

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

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

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

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

34 (e) The utility district is hereby authorized to provide for the issuance of refunding bonds

1 of the utility district for the purpose of refunding any bonds then outstanding which shall have
2 been issued under the provisions of this chapter, including the payment of any redemption
3 premium on the bonds or interest accrued or to accrue to the earliest or subsequent date of
4 redemption, purchase or maturity of the bonds and, if deemed advisable by the utility district, for
5 the additional purpose of paying all or a part of the cost of acquiring, constructing, reconstructing,
6 rehabilitating, or improving any property, facilities or systems or parts of property facilities or
7 systems of the utility district. The proceeds of bond or notes issued for the purpose of refunding
8 outstanding bonds or notes may be applied, in the discretion of the utility district, to the purchase,
9 retirement at maturity or redemption of outstanding bonds or notes either on their earliest or a
10 subsequent redemption date and may, pending that application, be placed in escrow in the same
11 manner and through the same means as are generally available to and incumbent upon political
12 subdivisions of the state.

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

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

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

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

- 1 (3) The setting aside of reserves and the creation of sinking funds and the regulation and
2 disposition thereof;
- 3 (4) Limitations on the right of the utility district to restrict and regulate the use of the
4 properties in connection with which the bonds are issued;
- 5 (5) Limitations on the purposes to which the proceeds of sale of any issue of bonds may
6 be put;
- 7 (6) Limitations on the issuance of additional bonds, including refunding bonds and the
8 terms upon which additional bonds may be issued and secured;
- 9 (7) The procedure, if any, by which the terms of any contract with bondholders may be
10 amended or abrogated, the percentage of bondholders whose consent shall be required for such
11 amendment or abrogation, and the manner in which consent may be given;
- 12 (8) The creation of special funds into which any earnings or revenues of the utility district
13 may be deposited, and the investment of the funds;
- 14 (9) The appointment of a fiscal agent and the determination of its powers and duties;
- 15 (10) Limitations on the power of the utility district to sell or otherwise dispose of its
16 properties;
- 17 (11) The preparation of annual budgets by the authority and the employment of
18 consultants and auditors;
- 19 (12) The rights and remedies of bondholders in the event of failure on the part of the
20 utility district to perform any covenant or agreement relating to a bond indenture;
- 21 (13) Covenanting that as long as any bonds are outstanding the utility district shall use its
22 best efforts to establish and maintain its rates and charges at levels adequate at all times to pay
23 and provide for all operating expenses of the utility district, all payments of principal, redemption
24 premium (if any), and interest on bonds, notes or other evidences of indebtedness incurred or
25 assumed by the utility district, all renewals, repairs and replacements to the property and facilities
26 of the utility district, and all other amounts which the utility district may be required by law to
27 pay; and
- 28 (14) Any other matters of like or different character which in any way affect the security
29 or protection of the bonds.
- 30 (h) The bonds of the utility district are hereby made securities in which all public officers
31 and bodies of this state and all municipalities and municipal subdivisions, all insurance
32 companies and associations and other persons carrying on an insurance business, all banks,
33 bankers, trust companies, savings banks, and savings associations (including savings and loan
34 associations), building and loan associations, investment companies and other persons carrying

1 on a banking business, all administrators, guardians, executors, trustees and other fiduciaries and
2 all other persons whomsoever, who are now or may thereafter be authorized to invest in bonds or
3 other obligation of the state may properly and legally invest funds including capital in their
4 control or belonging to them. The bonds are also hereby made securities which may be deposited
5 with and shall be received by all public officers and bodies of this state, and all municipalities and
6 municipal subdivisions, for any purpose for which the deposit of bonds or other obligations of
7 this state is now or may thereafter be required.

8 **45-67-12. Money of the utility district.**

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

24 (b) Notwithstanding subsection (a) of this section, or any other provision of this chapter,
25 the board of utility commissioners shall have the power to authorize by resolution a loan or
26 advance from one utility fund of the utility district to another. Any such interfund advance or loan
27 shall be for a term specified in the authorizing resolution of the board of utility commissioners
28 and shall bear interest at a rate reasonably determined by the board of utility commissioners to be
29 consistent with the public interest implicated in all funds involved in the interfund loan or
30 advance; provided, however, that an interest rate set at the rate applicable to the utility district's
31 most recent borrowing from a bank or other financial institution shall be presumptively
32 reasonable as the rate of interest for an interfund loan or advance.

33 **45-67-13. Alteration, amendment, repeal or severability.**

34 The right to alter, amend or repeal this chapter is reserved to the state, but no such

1 alteration, amendment or repeal shall operate to impair the obligation of any contract made by the
2 utility district under any power conferred by this chapter. If any section, clause, provision or term
3 of this chapter shall be declared unconstitutional, void, ultra vires or otherwise ineffective in
4 whole or in part, such determination of invalidity shall not otherwise affect the validity or
5 enforceability of any other provision of this chapter.

6 **45-67-14. Tax exemption.**

7 It is hereby declared that the utility district, in the carrying out of its quasi-municipal
8 purposes, is in all respects providing essential services to the people of the state of Rhode Island
9 that improves their health, safety and welfare. Accordingly, the district shall not be required to
10 pay taxes, assessments or sums in lieu of taxes to the state of Rhode Island or any political
11 subdivision thereof upon any of the property now owned or acquired in the future by the district,
12 or under its jurisdiction and/or control, possession or supervision or upon its activities or
13 operations, or upon any earnings, revenues, monies or other income derived by the district. The
14 bonds issued by the district and any income therefrom shall at all times be exempt from taxation;
15 provided, however, nothing in this section shall have any effect upon the water resources board,
16 or the division of public utilities and carriers, and/or the public utilities commission's authority to
17 impose regulation-related assessments and charges on the utility district.

18 **45-67-15. Reversion upon dissolution or termination.**

19 Upon dissolution or termination of the utility district, the assets of the utility district that
20 remain after payment or making provision for payment of all bonds, notes and other obligations
21 of the utility district shall be distributed to the town of New Shoreham or to one or more states,
22 political subdivision thereof, or other organizations, the income of which is excluded from gross
23 income under Section 115(1) of the United States Code.

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

=====
LC002445
=====

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.

=====
LC002445
=====