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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2017

A N A C T

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

Introduced By: Senators Lynch Prata, Gallo, Sosnowski, Miller, and Coyne

Date Introduced: March 02, 2017

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, 2018, and each July 1 thereafter, two hundred fifty
10 thousand dollars (\$250,000) of the fees collected under the climate change coastal adaptation trust
11 fund (§46-23.3-9) shall be deposited into the trust. The trust shall be available for disbursement
12 by the council in accordance with the restrictions and purposes of this chapter and subject to an
13 annual appropriation by the legislature. The trust may also receive federal, state, municipal, and
14 private grants, gifts, or donations. Funds in the trust shall not be used for mitigating any current,
15 planned or future projects that degrade, fill, or otherwise destroy coastal or estuarine habitats.
16 Funds in the trust shall not be used to fulfill any liability for restoration required by any local,
17 state or federal 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 CLIMATE CHANGE COASTAL ADAPTATION TRUST 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 improve the quality of life and economic prosperity of the citizens of the state.

32 (b) Findings.

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

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

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

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

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

11 (6) Providing areas for coastal and estuarine habitats to migrate is essential to preserving
12 coastal and marine wildlife resources.

13 (7) Rhode Island coastal infrastructure is at risk and the state must begin to plan and
14 implement projects to protect it.

15 (8) Reducing the vulnerability of our infrastructure is vital to the economic prosperity and
16 quality of life of the citizens of the state.

17 (9) The state, and Rhode Island cities and towns, need assistance in addressing the
18 impacts of climate change including protecting infrastructure.

19 **46-23.3-2. Definitions.**

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

23 (1) "Adaptation" means a response to sea level rise, flooding, storm surge and coastal
24 erosion and includes reducing the vulnerability of low-lying infrastructure on public land through
25 measures that include removal, relocation, and redesign of infrastructure, regrading of banks and
26 revegetation, acquisition of that area of land necessary to maintain public access, and preserving
27 or securing lateral access along the shoreline.

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

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

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

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

33 (6) "Infrastructure" means and includes roads, parking lots and other paved surfaces,
34 structural shoreline protection facilities, buildings, water control structures, other structures, and

1 remnants of coastal development.

2 (7) "Public land(s)" means property owned by state or municipal governments and lands
3 dedicated to public use.

4 (8) "Structural shoreline protection facilities" means and includes revetments, bulkheads,
5 seawalls, groins, breakwaters, jetties, and other structures, the purpose or effect of which is to
6 control the erosion of coastal features, and includes any sheet pile walls, concrete or stone walls.

7 **46-23.3-3. The Rhode Island climate change coastal adaptation trust fund.**

8 (a) Establishment. There is established within the department, and the council, the Rhode
9 Island coastal adaptation trust fund (the "adaptation trust").

10 (b) Climate change coastal adaptation trust fund grants. Factors to be taken into account
11 by the technical committee for the purposes of granting monies to municipalities and the state for
12 coastal adaptation grants, determining the eligibility of projects for financial assistance, and in
13 prioritizing the selection of projects by the technical committee shall include, but need not be
14 limited to:

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

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

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

24 (4) The severity of the risk and/or extent of degradation to infrastructure on public land;

25 (5) The extent of the use by the public of the land;

26 (6) The proposed milestones to ensure that the project is completed as designed and
27 approved;

28 (7) Whether the adaptation project can also be shown to create or replace habitat losses
29 that benefit fish and wildlife resources;

30 (8) Potential water quality improvements;

31 (9) Potential improvements to fish and wildlife habitats for species which are identified
32 as rare or endangered by the Rhode Island natural history survey or the Federal Endangered
33 Species Act [16 U.S.C. §1531 et seq.];

34 (10) The level and extent of collaboration by partners (e.g., municipality, nongovernment

1 organization, watershed council, federal agency, etc.); and

2 (11) Overall potential benefits to the public and estimated length of time frame of benefit.

3 **46-23.3-4. Ineligible projects.**

4 Funds in the climate change coastal adaptation trust fund shall not be used for:

5 (1) Mitigating any current, planned or future projects that degrade, fill, or otherwise
6 destroy coastal or estuarine habitats;

7 (2) Fulfilling any liability for restoration required by any local, state or federal agency
8 pursuant to an environmental or public health enforcement action; or

9 (3) Elevating or replacing infrastructure in a vulnerable area, constructing or
10 reconstructing structural shoreline protection facilities or for structures associated with upgrades
11 to existing roadways.

12 **46-23.3-5. Allocation of the trust.**

13 Funds from the trust shall be used to carry out the purposes of this chapter as follows:

14 (1) The administrative, personnel and equipment expenses required to carry out the
15 activities of the program as described in this chapter. The department and the council shall be
16 responsible for submitting annual budget requests for its administrative and implementation costs
17 of the program;

18 (2) The design, planning, engineering, construction, and monitoring of adaptation
19 projects as described in this chapter; and

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

23 **46-23.3-6. Technical advisory committee.**

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

28 **46-23.3-7. Disbursement process.**

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

32 (b) The department and the council shall submit to the governor and the general assembly
33 during annual budget preparations a list of adaptation project proposals that have received a
34 positive review by the technical advisory committee and require funds from the trust to proceed

1 with the design, planning, construction and/or monitoring during the ensuing year.

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

4 **46-23.3-8. Financing of the fund.**

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

6 (1) Sums the legislature may appropriate;

7 (2) Monies received from federal, state, or other sources for the purpose of coastal
8 adaptation;

9 (3) Monies received from any private donor for the climate change coastal adaptation
10 trust fund;

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

12 (7) Any interest earned on the monies in the fund.

13 **46-23.3-9. Uniform climate change and coastal adaptation fee.**

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

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

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

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

34 (e) For the purposes of this chapter, "designated amount" means an amount equal to ten

1 million dollars (\$10,000,000), adjusted for inflation after January 1, 2018, according to an index
2 which the director may reasonably choose.

3 (f) All fees collected pursuant to this section shall be deposited in the climate change and
4 coastal adaptation trust fund, and shall be disbursed according to the purposes expressed in §46-
5 23.3-1.

6 (g) Notwithstanding the provisions of subsection (f) of this section, on July 1, 2018 and
7 each July 1 thereafter, two hundred fifty thousand dollars (\$250,000) of the fees collected under
8 this section shall be deposited into the coastal and estuarine habitat restoration trust fund (the
9 "trust").

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

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

13 SECTION 3. This act shall take effect on July 1, 2017.

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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 the Rhode Island coastal adaptation trust fund. The trust would
2 enable cities and towns and the state to apply for grants to fund projects that invest in measures
3 that adapt infrastructure on public lands to address the impacts of climate change. The trust would
4 be funded by fees on barrels of petroleum products.

5 This act would take effect on July 1, 2017.

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