

2021 -- S 0035 SUBSTITUTE A AS AMENDED

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2021

A N A C T

**RELATING TO WATERS AND NAVIGATION -- THE OCEAN STATE CLIMATE
ADAPTATION FUND**

Introduced By: Senators Pearson, Euer, Coyne, Anderson, Valverde, Archambault,
Kallman, Bell, DiMario, and Acosta

Date Introduced: January 19, 2021

Referred To: Senate Environment & Agriculture

It is enacted by the General Assembly as follows:

1 SECTION 1. Legislative findings and purpose.

2 The general assembly hereby finds and declares that:

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

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

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

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

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

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

17 (7) Ecosystem services that natural environments provide, such as dampening of wave
18 energy and flood storage are at risk due to climate change, and protecting natural systems is vital

1 to protecting built infrastructure and is cost effective.

2 (8) Rhode Island infrastructure is at risk and the state must begin to plan and implement
3 projects to adapt to changing conditions.

4 (9) Reducing the vulnerability of our infrastructure is vital to the economic prosperity and
5 quality of life of the citizens of the state.

6 (10) The state, cities, and towns, need a dedicated, long-term source of funding to assist in
7 implementing projects to address the impacts of climate change.

8 (11) The purpose of this chapter is to create the Ocean State Climate Adaptation and
9 Resilience (OSCAR) fund as a dedicated long-term source of grant funds to enable cities and towns
10 to implement projects that restore and improve the climate resilience of vulnerable coastal habitats,
11 as well as river and stream floodplains with priority to projects that improve community resilience
12 and public safety.

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

15 CHAPTER 23.3

16 THE OCEAN STATE CLIMATE ADAPTATION AND RESILIENCE FUND

17 **46-23.3-1. Short title.**

18 This chapter shall be known as the "Ocean State Climate Adaptation and Resilience Fund".

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

20 For the purposes of this chapter, the following words and phrases shall have the following
21 meanings:

22 (1) "Adaptation and resilience projects" means those projects on public land that protect or
23 enhance coastal or riverine habitats to address climate change impacts. Adaption and resilience
24 projects include, but are not limited to, those projects that reduce the vulnerability of low-lying
25 infrastructure on public land through measures that include removal and relocation of
26 infrastructure, restoration of river and stream floodplains, including regrading of banks,
27 revegetation, acquisition of that area of land necessary to maintain and preserve public access, and
28 redesigning, resizing and replacing culverts and bridge spans at existing wetland crossings.

29 (2) "Bank" means the Rhode Island infrastructure bank."

30 (3) "Climate change impacts" means and includes, but is not limited to, flooding, erosion,
31 sea level rise, and storm surge.

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

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

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

1 (7) "Infrastructure" means and includes, but is not limited to, roads, parking lots and other
2 paved surfaces, shoreline protection structures, buildings, water control structures, culverts, other
3 structures and remnants of development.

4 (8) "Public land(s)" means property owned by state or municipal governments, including
5 any quasi-public agencies thereof, public and private lands dedicated to public use, including lands
6 that provide access to shorelines and riverbanks. Public lands include properties where the state or
7 municipality holds an easement for public purposes.

8 (9) "Shoreline protection structures" means and includes, but is not limited to, revetments,
9 bulkheads, seawalls and floodwalls, breakwaters, jetties, and other structures, the purpose or effect
10 of which is to control the erosion of coastal or river features, and includes, but is not limited to, any
11 sheet pile walls, concrete or stone walls.

12 **46-23.3-3. Technical advisory committee.**

13 There is hereby established a technical advisory committee consisting of four (4) members
14 as follows: one member shall be the director of the department of environmental management, or
15 designee; one member shall be the director of the coastal resources management council, or
16 designee; one member shall be the director of the state planning council within the department of
17 administration, or designee; and one member shall be the director of the Rhode Island emergency
18 management authority, or designee. The technical advisory committee shall serve as an advisory
19 board to the department, council and the program staff.

20 **46-23.3-4. Establishment -- The ocean state climate adaptation and resilience fund.**

21 (a) Establishment. There is established within the Rhode Island infrastructure bank, the
22 Ocean State Climate Adaptation and Resilience fund (the "OSCAR fund").

23 (b) Financing. The fund shall consist of the following sources:

24 (1) Sums the general assembly may appropriate;

25 (2) Monies received from Federal, state, or other sources, including bond funds, for the
26 purposes of the OSCAR fund;

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

28 (4) Any interest earned on the monies in the fund.

29 (c) Allocation of OSCAR funds. OSCAR funds shall be used to carry out the purposes of
30 this chapter as follows:

31 (1) The administrative expenses required to carry out the activities of the program as
32 described in this chapter shall not exceed fifty thousand dollars (\$50,000) each for the Rhode Island
33 infrastructure bank, coastal resources management council and the department of environmental
34 management annually, which sum shall not include the cost of issuing bonds or notes, if any. The

1 department and the council shall be responsible for submitting annual budget requests for its
2 administrative and implementation costs of the program to the bank;

3 (2) The planning, design, engineering, construction, and monitoring of adaptation and
4 resilience projects as defined in this chapter; and

5 (3) The OSCAR projects approved by the department and the council upon
6 recommendation of the technical advisory committee. Only grants approved through the process
7 established by the department and council shall be eligible for funding under this program. Subject
8 to the availability of funds in the OSCAR fund, the bank shall award funding upon receipt of written
9 approval of the department and council.

10 (d) OSCAR fund grants. Factors to be taken into consideration by the technical advisory
11 committee for the purposes of granting monies to municipalities and the state for OSCAR grants,
12 for determining the eligibility of projects for financial assistance, and in prioritizing the selection
13 of projects by the technical committee shall include, but need not be limited to:

14 (1) Consistency with the following where applicable: the council's most recent projections
15 for sea level rise, the coastal habitat restoration strategy, the state nonpoint source pollution control
16 plan and other applicable state and federal laws.

17 (2) The ability and authority of the applicant to carry out and properly maintain the
18 adaptation and resilience project;

19 (3) Whether the project will enhance public access to public land;

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

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

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

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

26 (8) Potential water quality improvements;

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

30 (10) The level and extent of collaboration by partners (e.g., municipality, nongovernment
31 organization, watershed council, federal agency, etc.); and

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

33 **46-23.3-5. Eligible and ineligible projects.**

34 (a) Funds in the Ocean State Climate Adaptation and Resilience (OSCAR) fund shall be

1 used solely for adaptation and resilience projects as defined in § 46-23.3-2(1).

2 (b) The OSCAR fund shall not be used for:

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

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

7 (3) With the exception of culverts as specifically described in § 46-23.3-2(1), elevating,
8 repairing or replacing infrastructure, or constructing new infrastructure, in its existing location that
9 is experiencing climate change impacts as defined in § 46-23.3-2(2);

10 (4) Constructing new, or repairing existing shoreline protection structures; provided,
11 however, that existing shoreline protection structures on public parks may be repaired; and/or

12 (5) Constructing roads or bridges.

13 **46-23.3-6. Disbursement process and reporting.**

14 (a) The department and the council shall establish and execute a process, at least annually,
15 for the solicitation, evaluation and award of grants for projects that meet the requirements set forth
16 in this chapter. The department and council shall forward their respective written notification of
17 approval of a project application to the bank.

18 (b) The department, the council and the bank shall jointly submit a report to the speaker of
19 the house of representatives and the president of the senate not later than the tenth day following
20 the convening of each regular session of the general assembly. The report shall include the
21 following:

22 (1) The amount of money awarded from the OSCAR fund during the preceding fiscal year;

23 (2) A brief summary of the projects that received funding and a timeline of implementation;
24 and

25 (3) Any other information requested by the general assembly.

26 (c) Nothing contained in this chapter is intended to abrogate or affect the existing powers
27 of the department of environmental management, the coastal resources management council or the
28 bank.

29 **46-23.3-7. Regulations.**

30 The council, the department and the bank shall adopt all rules and regulations necessary
31 for the administration and enforcement of this chapter.

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

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

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RELATING TO WATERS AND NAVIGATION -- THE OCEAN STATE CLIMATE
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1 This act would establish the Ocean State Climate Adaptation and Resilience Fund. The
2 fund would enable cities, towns and the state to apply for grants to fund projects that restore
3 and improve the climate resilience of vulnerable coastal habitats, as well as river and stream
4 floodplains with priority to projects that improve community resilience and public safety.

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