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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 CLIMATE CHANGE COASTAL
ADAPTATION TRUST FUND

Introduced By: Representatives Vella-Wilkinson, Noret, Ruggiero, McGaw, Kazarian,
and Shanley

Date Introduced: February 05, 2021

Referred To: House Finance

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 a
6 Rhode Island coastal and estuarine habitat restoration trust fund (the "trust"). On July 1, 2002, July
7 1, 2004 and each July 1st thereafter, two hundred and fifty thousand dollars (\$250,000) of the fees
8 collected under the uniform oil spill response and prevention statute (§ 46-12.7-4.1) shall be
9 deposited into the trust. On July 1, 2021, and each July 1 thereafter, two hundred fifty thousand
10 dollars (\$250,000) of the fees collected under the climate change coastal adaptation fee (§ 46-23.3-
11 9) shall be deposited into the trust. The trust shall be available for disbursement by the council in
12 accordance with the restrictions and purposes of this chapter and subject to an annual appropriation
13 by the legislature. The trust may also receive federal, state, municipal, and private grants, gifts, or
14 donations. Funds in the trust shall not be used for mitigating any current, planned or future projects
15 that degrade, fill, or otherwise destroy coastal or estuarine habitats. Funds in the trust shall not be
16 used to fulfill any liability for restoration required by any local, state or federal agency pursuant to
17 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 restoration
3 projects for financial assistance, and in prioritizing the selection of estuary and coastal habitat
4 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 goals
12 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 as
19 rare or endangered by the Rhode Island Natural History Survey or the federal Endangered Species
20 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 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 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 are
5 wide-ranging, discernible and documented, and, in many cases growing in severity and include sea
6 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 and
8 Atmospheric Administration to be a maximum of approximately one foot in 2035, two feet (2') in
9 2050 and up to nine feet (9') by 2100.

10 (5) Annual precipitation has increased by two inches (2") 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 energy,
17 flood storage, etc.) are at risk due to climate change and protecting natural systems is vital to
18 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 and
22 quality of life of the citizens of the state.

23 (11) The state, and Rhode Island cities and towns, need assistance in addressing the impacts
24 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 proposed
31 in a response to climate change impacts as defined in subsection (2) of this section. Adaption and
32 resilience projects include those projects that reduce the vulnerability of low-lying infrastructure
33 on public land through measures that include removal, relocation, and redesign of infrastructure,
34 regrading of banks and revegetation, acquisition of that area of land necessary to maintain public

1 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 trust**
19 **fund.**

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

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

27 (1) Consistency with the following where applicable: the council's projections for sea level
28 rise, the coastal habitat restoration strategy, the state coastal nonpoint pollution control plan,
29 Federal Flood Risk Management Standards, pertinent elements of the state guide plan, the goals of
30 the executive climate change coordinating council (EC4), and strict compliance with the coastal
31 resources management program and the department of environmental management 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 that
6 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 as
9 rare or endangered by the Rhode Island natural history survey or the Federal Endangered Species
10 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) trust fund shall be
16 used solely for adaptation and resilience projects as defined in § 46-23.3-2.

17 (b) Funds in the OSCAR trust fund shall not be used for:

18 (1) Mitigating any current, planned or future projects that degrade, fill, or otherwise destroy
19 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;

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 or repairing existing shoreline protection structures; provided,
25 however, that existing shoreline protection structures on public parks may be repaired; and/or

26 (5) Constructing roads or bridges.

27 **46-23.3-5. Allocation of the OSCAR trust fund.**

28 Funds from the Ocean State Climate Adaptation and Resilience (OSCAR) trust fund shall
29 be used to carry out the purposes of this chapter as follows:

30 (1) The administrative expenses required to carry out the activities of the program as
31 described in this chapter not to exceed fifty thousand dollars (\$50,000) per agency. The department
32 and the council shall be responsible for submitting annual budget requests for its administrative
33 and implementation costs of the program;

34 (2) The design, planning, engineering, construction, and monitoring of adaptation projects

1 as described in this chapter; and

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

5 **46-23.3-6. Technical advisory committee.**

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

10 **46-23.3-7. Disbursement process.**

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

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

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

21 **46-23.3-8. Financing of the OSCAR trust fund.**

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

23 (1) Sums the legislature may appropriate;

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

26 (3) Monies received from any private donor for the Ocean State Climate Adaptation and
27 Resilience (OSCAR) trust fund;

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

29 (5) Any interest earned on the monies in the Ocean State Climate Adaptation and
30 Resilience (OSCAR) trust fund.

31 **46-23.3-9. Uniform climate change adaptation fee.**

32 (a) A uniform climate change adaptation fee in an amount not exceeding five cents (\$.05)
33 for each barrel of petroleum products, as set by the director pursuant to subsection (d) of this
34 section, shall be imposed upon every person owning petroleum products at the time the petroleum

1 products are received at a marine terminal within this state by means of a vessel from a point of
2 origin outside this state. The fee shall be remitted to the division of taxation on the thirtieth day of
3 each month based upon the number of barrels of petroleum products received during the preceding
4 month.

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

10 (c) Whenever the director, in consultation with the department and the division of taxation,
11 estimates that the amount in either trust fund will reach the amount specified in subsection (e) of
12 this section, and the money in the trust fund is not required for the purposes specified in § 46-23.3-
13 1, the director shall instruct the division of taxation to cease collecting the fee.

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

18 (e) For the purposes of this chapter, "designated amount" means an amount equal to ten
19 million dollars (\$10,000,000), adjusted for inflation after January 1, 2022, according to an index
20 which the director may reasonably choose.

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

23 (g) Notwithstanding the provisions of subsection (f) of this section, on July 1, 2022 and
24 each July 1 thereafter, two hundred fifty thousand dollars (\$250,000) of the fees collected under
25 this section shall be deposited into the coastal and estuarine habitat restoration trust fund (the
26 "trust").

27 **46-23.3-10. Regulations.**

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

30 SECTION 3. This act shall take effect on July 1, 2021.

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

5 This act would take effect on July 1, 2021.

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