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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2012

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A N A C T

RELATING TO PUBLIC UTILITIES AND CARRIERS

Introduced By: Representatives Gallison, Malik, Morrison, Edwards, and Handy

Date Introduced: February 16, 2012

Referred To: House Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 39 of the General Laws entitled "Public Utilities and Carriers" is
2 hereby amended by adding thereto the following chapter:

3 CHAPTER 29

4 EAST BAY ENERGY CONSORTIUM ACT

5 **39-29.1. Short title.** -- This chapter shall be known as and may be cited as the "East Bay
6 Energy Consortium Act".

7 **39-29.2. Legislative findings and declaration.** -- Recognizing the importance of
8 protecting, maintaining and utilizing all sources of energy for the generation of electricity and
9 recognizing the importance of developing facilities in the East Bay for the generation of electrical
10 energy from sources not primarily dependent on fossil fuels, there is a need for municipal
11 participation in the development of such facilities. Accordingly, the general assembly hereby
12 finds and declares as follows:

13 (1) The overuse of fossil fuels as for the production of electricity is detrimental to the
14 environment of the state of Rhode Island and Providence Plantations;

15 (2) Development of alternative sources of energy for the production of electricity will
16 reduce the state's vulnerability to supply and price disruptions originating outside the state;

17 (3) The communities of the East Bay have presented a proposal whereby they would
18 develop facilities for the generation of electricity using alternative energy sources;

19 (4) The state and its citizens shall be better served and the environment enhanced by the

1 development of facilities for the generation of electricity through alternative energy sources; and

2 (5) The need for alternative means of producing electrical energy in East Bay requires
3 prompt action on the part of the state, its agencies, boards and commissions.

4 **39-29.3. Definitions. -- As used in this section:**

5 (1) "Alternative energy sources" means any renewable energy resource including,
6 without limitation, geothermal and tidal energy, and any other fuel or energy source but otherwise
7 excluding fossil fuels, nuclear energy, and hydroelectric energy.

8 (2) "Board" means the board of delegates of the East Bay Energy Consortium Board
9 created pursuant to the provisions of section 39-29-5.

10 (3) "Bonds" means bonds, notes, or other obligations issued by the consortium.

11 (4) "Consortium" means the East Bay Energy Consortium.

12 (5) "Participating community" means those eligible towns and cities which, by ordinance
13 adopted by the applicable city or town council, choose to join the consortium. The eligible towns
14 are Barrington, Bristol, Little Compton, Middletown, Portsmouth, Tiverton, and Warren, and the
15 eligible cities are East Providence and Newport.

16 (6) "Property" means any or all of the properties of any electric generation and
17 interconnection system or part thereof, including plants, works, and instrumentalities, and all
18 properties used or useful in connection therewith, and all parts thereof and all appurtenances
19 thereto, including lands, easements, rights in land and water rights, rights-of-way, contract rights,
20 franchises, approaches, connections, dams, reservoirs, water mains and pipelines, pumping
21 stations and equipment, or any other property incidental to and included in the system or part
22 thereof situated within or without the district.

23 (7) "Treasurer" means the treasurer of the consortium.

24 **39-29.4. Adopting ordinances. -- An eligible community may, by ordinance, join the**
25 consortium. The ordinance shall specify the method of electing or appointing a delegate to
26 represent the eligible community on the board and shall indicate whether the delegate shall serve
27 for a specified term and what that term shall be or whether the delegate shall serve at the pleasure
28 of the appointing authority.

29 **39-29.5. Board created. -- A board to be known as the East Bay Energy Consortium**
30 Board is hereby created.

31 **39-29.6. Composition of board. -- (a) The board shall consist of one delegate elected or**
32 appointed by each participating community.

33 (b) A majority of the members of the board then in office shall constitute a quorum, and
34 the vote of a majority of a quorum shall be necessary for any action taken by the consortium,

1 except to the extent otherwise provided by the bylaws. No vacancy in the membership of the
2 board shall impair the right of a quorum to exercise all the rights and perform all the duties of the
3 consortium.

4 (c) In the event of a vacancy occurring in the board by reason of the death, resignation, or
5 removal for willful misconduct of a member, the governing body of the town or city which
6 appointed the member shall appoint a new member for any unexpired term.

7 (d) In the month of January, the board shall make an annual report to the town or city
8 council of each participating community of consortium's activities for the preceding fiscal year.
9 Each report shall set forth a complete operating and financial statement covering its operations
10 during the year. The consortium shall cause an annual audit of the books, records, and accounts of
11 the consortium to be made.

12 **39-29.7. Officers and employees of board. --** The chairperson of the board shall be
13 selected by the majority vote of the members of the board. The board shall appoint a secretary
14 and a treasurer who need not be a member of the board and such other employees as may be
15 necessary in its judgment, and fix their compensation. The board may provide, in the fixing of
16 compensation, for a retirement program, commonly known as a pension plan, funded by
17 individual or group insurance or annuity contracts or otherwise, for health and accident insurance,
18 for life insurance, for hospital service, and for physicians' service for any one or more or all of its
19 employees; and the board is hereby authorized to expend the moneys of the consortium for such
20 purposes and programs as it may deem advisable. These programs and purposes may be financed
21 in full or in part by the moneys of the consortium.

22 **39-29.8. Compensation of members and agents. --** Delegates shall serve without
23 compensation from the consortium but may receive compensation from the appointing town or
24 city. Each delegate shall be entitled to reimbursement from the consortium of his or her actual
25 and necessary expenses incurred in the performance of his or her official duties. The salaries,
26 compensation, and expenses of all officers, employees, and agents (other than salaries and
27 compensation of delegates, if any) shall be paid solely out of the funds of the consortium. No part
28 of the earnings of the consortium shall inure to the benefit of any private person.

29 **39-29.9. Business prohibited to delegates. --** No delegate to the consortium shall
30 directly or indirectly engage in any contract or agreement for labor or for the supply of materials
31 for construction or reconstruction of the physical assets of the consortium or replacements or
32 additions thereto.

33 **39-29.10. Powers and duties of consortium. --** The consortium shall have the following
34 powers and duties:

- 1 (1) To make and alter bylaws, not inconsistent with this chapter or with the laws of this
2 state, for the administration and regulation of its business and affairs;
- 3 (2) To adopt and alter a corporate seal;
- 4 (3) To sue, be sued, complain and defend in its name in all courts;
- 5 (4) To be a promoter, partner, member, associate, or manager of any partnership,
6 enterprise, or venture; provided, however, that the consortium shall not have any power to create,
7 empower or otherwise establish any corporation, subsidiary corporation, corporate body, any
8 form of partnership, or any other separate entity without the express approval and authorization of
9 the general assembly;
- 10 (5) To transact its business, carry on its operations and have and exercise the powers
11 granted by this chapter;
- 12 (6) To contract and incur liabilities in its own name for any lawful purpose which would
13 effectuate the provisions of this chapter; to execute all instruments necessary to carry out the
14 purposes of this chapter; and to do all things necessary or convenient to carry out the powers
15 expressly granted by this chapter; provided, however, that the full faith, credit, and taxing power
16 of the state shall never be pledged, nor shall any bond, note, or other evidence of indebtedness of
17 the consortium constitute an obligation of the state;
- 18 (7) To indemnify and advance expenses to any delegate, officer, agent or employee, past
19 or present, to the same extent as a corporation formed under chapter 1.2 of title 7 may indemnify
20 any of its delegates, officers or agents and subject to the standards and restrictions, if any, set
21 forth in its bylaws and to purchase and maintain insurance on behalf of any delegate, manager,
22 agent or employee against any liability asserted against him and incurred by the delegate,
23 manager, agent or employee in that capacity or arising out of the delegate's, manager's, agent's
24 or employee's status, whether or not the consortium would have the power to indemnify under the
25 provisions of this section, the articles of organization or operating agreement;
- 26 (8) To pay pensions and establish pension plans, pension trusts, profit sharing plans and
27 other incentive and benefit plans for any or all of its agents and employees;
- 28 (9) To provide insurance for its benefit on the life of any of its agents or employees.
- 29 (10) To elect or appoint agents and define their duties and fix their compensation;
- 30 (11) To engage the services of consultants on a contract basis for rendering professional
31 and technical assistance and advice, and to employ architects, engineers, attorneys, accountants,
32 construction, and financial experts and any other advisors, consultants, and agents as may be
33 necessary in his or her judgment, and to fix their compensation;
- 34 (12) To invest any funds of the consortium, including funds held in reserve or sinking

1 funds, or any moneys not required for immediate use or disbursement at the discretion of the
2 consortium, in: (i) Obligations of the state or the United States; (ii) Obligations of the principal
3 and interest of which are guaranteed by the state or the United States; (iii) Obligations of agencies
4 and instrumentalities of the state or the United States; or (iv) Certificates of deposits of banks and
5 trust companies or shares of building loan associations organized under the laws of the state or
6 doing business in the state; or (v) Any obligations, securities, and other investments as shall be
7 specified in resolutions of the consortium, and to take and hold real and personal property as
8 security for the payment of amounts lent or invested;

9 (13) To purchase, take, receive, lease, or otherwise acquire, own, hold, improve, use, and
10 otherwise deal in and with, real or personal property, or any interest in real or personal property,
11 wherever situated, to obtain options for the acquisition thereof, and to mortgage or pledge the
12 same. If the consortium deems it advisable, to acquire any property through the purchase of stock
13 and obligations of a corporation owning the property and the dissolution of the corporation. The
14 owner or owners of any property which the consortium is herein authorized to acquire are hereby
15 authorized to sell or otherwise transfer the same to the consortium, and in the case of a sale or
16 other transfer of property pursuant to this provision it shall be lawful to dissolve the corporation,
17 any other provision of law to the contrary notwithstanding;

18 (14) To make and execute agreements of lease, conditional sales contracts, installment
19 sales contracts, loan agreements, mortgages, construction contracts, operation contracts, and other
20 contracts and instruments necessary or convenient in the exercise of the powers and functions of
21 the corporation granted by this chapter;

22 (15) To own and operate, maintain, repair, improve, enlarge, and extend, in accordance
23 with the provisions of this chapter, any properties acquired and conduct its activities within or
24 without the state all of which, together with the acquisition of the property, are hereby declared to
25 be public purposes;

26 (16) To sell, transfer and dispose of any property, real, personal, or mixed, or interest
27 therein when no longer needed for its purposes, to grant options for the purchase of such;
28 provided, however, that in the case of any sale or proposed sale of any real property hereunder,
29 the consortium shall first grant to the city or town in which the real property, or any part thereof,
30 is situated (if such town or city is located in Rhode Island and Providence Plantations) the right to
31 purchase the real property, or portion thereof situated within its boundaries, upon the same terms
32 and conditions as the consortium offers or proposes to offer to any other prospective purchaser;

33 (17) To produce electricity within or without the territorial limit of the participating cities
34 and towns; provided, however, that the primary fuels or other energy sources for the production

1 of electricity shall be alternative energy sources:

2 (18) To distribute and sell electricity within the territorial limit of the participating towns
3 and cities;

4 (19) To fix, charge and collect rents, fees, rates, and charges for the use of any project or
5 the electricity generated or delivered thereby and to make assessments and impose reasonable and
6 just user charges, so as to provide revenues sufficient at all times to pay, as the same shall become
7 due, the principal and interest and on any bonds issued by the consortium, together with the
8 maintenance of proper reserves therefor, in addition to paying, as the same shall become due, the
9 expenses of operating and maintaining the property of the consortium, together with proper
10 reserves for depreciation, maintenance, and contingencies and all other obligations and
11 indebtedness of the consortium and to pay for those expenses that may be required by law or as
12 may be determined by the consortium to be necessary for the maintenance and operation of its
13 projects. Except with respect to electricity delivered to a participating town or city pursuant to a
14 net metering arrangement, the consortium shall charge any town or city for the use of any facility
15 of or service rendered by or any commodities furnished to it by the consortium at rates applicable
16 to other users taking similar service;

17 (20) To enter into any net metering arrangement. If the consortium enters into a net
18 metering arrangement on its own behalf, all municipal accounts of all participating communities
19 shall be treated as accounts eligible for net metering within an eligible net metering system site.
20 If the consortium enters into a net metering arrangement on behalf of one or more but less than all
21 participating communities, (i) The consortium shall designate the specific eligible net metering
22 resources to which the arrangement applies electric distribution; (ii) Only municipal accounts of
23 the towns and cities on whose behalf the arrangement is made shall be treated as accounts eligible
24 for net metering with respect to the designated resources; and (iii) The net metering arrangement
25 may contain provisions designed to prevent netting of excess consumption by one participating
26 community against excess production of another participating community or production by the
27 towns and cities on behalf of which the arrangement is not made, under such conditions and
28 circumstances as may be specified in the arrangement, and such provisions shall be applicable to
29 the participating communities on behalf of which the arrangement was not made as well as the
30 towns and cities on behalf of which the arrangement was made; provided, that on request of any
31 participating town or city or the electric distributing company the commission shall have the
32 authority to make determination whether specific provisions are appropriate and fair;

33 (21) To borrow money through the Rhode Island Economic Development Corporation for
34 any of its corporate purposes, including the creation and maintenance of working capital, and to

1 issue negotiable bonds, notes, or other obligations and to fund or refund the same;

2 (22) Subject to the provisions of any contract with note holders or bond holders, to
3 consent to the modification, with respect to rate of interest, time of payments of any installment
4 of principal or interest, security or any other term of any mortgage, mortgage loan, mortgage loan
5 commitment, contract, or agreement of any kind to which the corporation is a party;

6 (23) As security for the payment of principal and interest on any bonds or notes or any
7 agreements made in connection therewith, to mortgage and pledge any or all of its projects and
8 property, whether then owned or thereafter acquired, and to pledge the revenues and receipts from
9 all or part thereof, and to assign or pledge the leases, sales contracts or loan agreements or other
10 agreements on any portion or all of its projects and property and to assign or pledge the income
11 received by virtue of the lease, sales contracts, loan agreements or other agreements;

12 (24) To contract for and to accept any gifts or grants or loans or funds or property or
13 financial or other assistance in any form from the United States or any agency or instrumentality
14 of the United States or from the state or any agency or instrumentality of the state or from any
15 other source and to comply, subject to the provisions of this chapter, with the terms and
16 conditions of this contract;

17 (25) To enter into agreements with any municipality or political subdivision, providing
18 that the consortium shall pay annual sums as the consortium shall negotiate in lieu of taxes to the
19 municipality or political subdivision of the state in respect to any real or personal property which
20 is owned by the consortium and is located in the municipality or political subdivision;

21 (26) To enter into cooperative agreements with cities, towns, or companies within or
22 without the district for the interconnection of facilities or for any other lawful corporate purposes
23 necessary or desirable to effect the purposes of this chapter; and

24 (27) To have and exercise all powers necessary or convenient to effect its purposes.

25 **39-29.11. Application of public utility law – Rate determination. --** The provisions of
26 chapters 39-1 through to and including chapter 39-5 of this title shall not apply to the consortium
27 created by this chapter, and the consortium shall be exempt from the provisions of said chapters.

28 **39-29.12. Power to issue bonds – Pledge of revenues. --** The consortium shall have the
29 power and is hereby authorized from time to time to issue its negotiable bonds for any of its
30 purposes and to secure the payment of the bonds as may be provided in the resolution or
31 resolutions authorizing the bonds. Projects undertaken by the consortium to develop, maintain,
32 or utilize eligible net metering resources shall not be considered to be essential public facilities
33 for purposes of chapter 18 of title 35.

34 **39-29.13. Security for bonds or notes. --** (a) The principal of and interest on any bonds

1 or notes issued by the consortium may be secured by a pledge of any or all revenues and receipts
2 of the consortium and may be secured by a mortgage or other instrument covering all or any part
3 of one or more projects, including all or part of any additions, improvements, extensions to, or
4 enlargements of projects thereafter made.

5 (b) Bonds or notes issued for the acquisition, construction, reconstruction, rehabilitation,
6 development, or improvement of one or more projects may also be secured by an assignment of
7 leases of, or mortgages on, or contracts of sale or loan agreements with regard to the project or
8 projects and by an assignment of the revenues, receipts, payments, or repayments derived by the
9 consortium from those leases, mortgages, sales agreements, or loan agreements.

10 (c) The resolution under which the bonds or notes are authorized to be issued and any
11 mortgage, lease, sales agreement, or loan agreement, or other instrument may contain agreements
12 and provisions respecting the maintenance of the projects covered thereby, the fixing and
13 collection of rents, payments or repayments or other revenues, including moneys received in
14 repayment of loans, and interest on the loans, the creation and maintenance of special funds from
15 rents or other revenues and the rights and remedies available in the event of default, all as the
16 consortium shall deem advisable.

17 (d) Each pledge, agreement, mortgage, or other instrument made for the benefit or
18 security of any of the bonds or notes of the consortium shall be valid and binding from the time
19 the pledge is made and shall continue in effect until the principal of and interest on the bonds or
20 notes for the benefit of which the pledge was made has been fully paid, or until provision has
21 been made for the payment in the manner provided in the resolutions under which those bonds or
22 notes were authorized. The revenues, moneys, or property pledged by the consortium shall
23 immediately be subject to the lien of that pledge without any physical delivery thereof or further
24 act, and the lien of the pledge shall be valid and binding as against all parties having claims of
25 any kind in tort, contract, or otherwise against the consortium, irrespective of whether the parties
26 have notice thereof. Neither the resolution nor any other instrument by which a pledge is created
27 need be recorded.

28 (e) The consortium may provide in any proceedings under which bonds or notes may be
29 authorized that any project or part of a project may be constructed, reconstructed, rehabilitated, or
30 improved by the consortium, or any lessee, vendee, obligor, or any designee of the consortium
31 and may also provide in those proceedings for the time and manner of and requisitions for
32 disbursements to be made for the cost of the construction, and for any certificates and approvals
33 of construction and disbursements that the corporation shall deem necessary and provide for in
34 those proceedings.

1 (f) Any resolution under which bonds or notes of the consortium are authorized to be
2 issued (and any trust indenture established thereby) may contain provisions for vesting in a
3 trustee or trustees those properties, rights, powers, and duties in trust that the consortium may
4 determine.

5 (g) Any participating community may, in the manner provided in chapter 12 of title 45 or
6 another general or special act as though such guarantee were a bond of the participating
7 community, guarantee all or a part of repayment of principal of or payment of interest on any
8 bond of the consortium.

9 **39-29.14. Terms and sale of bonds - Refunding. --** (a) The consortium is hereby
10 authorized to provide by resolution for the issuance, at one time or from time to time, of revenue
11 bonds of the authority for the purpose of paying all or part of the cost to acquire, construct,
12 reconstruct, rehabilitate, improve, or maintain any property necessary or desirable for the
13 purposes of the authority. The bonds shall be authorized by resolution of the board, and shall bear
14 such date or dates, mature at such time or times not exceeding forty (40) years from their date,
15 bear interest at such rate or rates payable at such time or times, be in such denominations, be in
16 such form, either coupon or registered, carry such registration privileges and such privileges of
17 reconversion from registered to coupon form, be executed in such manner, be payable in such
18 medium of payment, at such place or places and be subject to redemption at such premium, if
19 required, and on such terms, as the resolution may provide. The consortium may purchase or
20 otherwise acquire or require bond insurance, letters of credit, lines of credit or such other
21 instruments or securities to insure the timely payment of principal, interest, and/or redemption
22 premium on the bonds.

23 (b) Pending the preparation of the bonds in definitive form, the consortium shall have the
24 power to issue temporary bonds or interim receipts in such form as the board may elect. The
25 definitive bonds shall be signed by the chairperson of the board or a facsimile thereof shall be
26 impressed or imprinted thereon and attested by the manual or facsimile signature of the secretary
27 of the consortium. Should any officer whose signature or facsimile of whose signature shall
28 appear on any bonds or coupons cease to be an officer before the delivery of the bonds, the
29 signature or the facsimile shall nevertheless be valid and sufficient for all purposes the same as if
30 he or she had remained in office until delivery.

31 (c) Any bonds, authorized by and issued pursuant to this chapter, may be sold at public or
32 private sale for such price or prices as the consortium shall determine.

33 (d) The consortium is hereby authorized to provide for the issuance of refunding bonds of
34 the consortium for the purpose of refunding any bonds then outstanding which shall have been

1 issued under the provisions of this chapter, including the payment of any redemption premium
2 thereon or interest accrued or to accrue to the earliest or subsequent date of redemption purchase
3 or maturity of the bonds and, if deemed advisable by the consortium, for the additional purpose of
4 paying all or part of the cost of acquiring, constructing, reconstructing, rehabilitating, or
5 improving any property of the consortium. The proceeds of bonds or notes issued for the purpose
6 of refunding outstanding bonds or notes may be applied, in the discretion of the board, to the
7 purchase, retirement at maturity, or redemption of the outstanding bonds or notes either on their
8 earliest or a subsequent redemption date, and may, pending that application, be placed in escrow.
9 Any escrowed proceeds may be invested and reinvested in obligations of or guaranteed by the
10 state or the United States, or in certificates of deposit, time deposits, or repurchase agreements
11 fully secured or guaranteed by the state or the United States, or an instrumentality of either,
12 maturing at such time or times as shall be appropriate to assure the prompt payment, as to
13 principal, interest, and redemption premium, if any, of the outstanding bonds or notes to be so
14 refunded. After the terms of the escrow have been fully satisfied and carried out, any balance of
15 the proceeds and interest, income, and profits, if any, earned or realized on the investments
16 thereof may be returned to the authority for use by it in furtherance of its purposes. The portion of
17 the proceeds of bonds or notes issued for the additional purpose of paying all or part of the cost of
18 acquiring, constructing, reconstructing, rehabilitating, developing, or improving any property of
19 the consortium may be invested and reinvested in such obligations, securities, and other
20 investments consistent with this section as shall be specified in the resolutions under which the
21 bonds are authorized and which shall mature not later than the times when the proceeds will be
22 needed for these purposes. The interest, income, and profits, if any, earned or realized on the
23 investments may be applied to the payment of all parts of the costs, or may be used by the
24 consortium otherwise in furtherance of its purposes. The issuance of the bonds, the maturities,
25 and other details thereof, the rights of the holders thereof, and the rights, duties, and obligations
26 of the authority in respect to the bonds shall be governed by the provisions of this chapter insofar
27 as the provisions may be applicable.

28 **39-29.15. Covenants permissible in bond resolution.** -- Any resolution or resolutions
29 authorizing any bonds or any issue of bonds may contain provisions which shall be a part of the
30 contract with the holders of the bonds thereby authorized, as to:

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

34 (2) The rates to be fixed and the charges to be collected and the amounts to be raised in

- 1 each year, and the use and disposition of the earnings and other revenues:
- 2 (3) The setting aside of reserves and the creation of sinking funds and the regulation and
3 disposition thereof;
- 4 (4) Limitations on the right of the consortium to restrict and regulate the use of the
5 properties in connection with which the bonds are issued;
- 6 (5) Limitations on the purposes to which the proceeds of sale of any issue of bonds may
7 be applied;
- 8 (6) Limitations on the issuance of additional bonds, including refunding bonds and the
9 terms upon which additional bonds may be issued and secured;
- 10 (7) The procedure, if any, by which the terms of any contract with bondholders may be
11 amended or abrogated, the amount of bonds the holders of which must consent thereto, and the
12 manner in which consent may be given;
- 13 (8) The creation of special funds into which any earnings or revenues of the consortium
14 may be deposited, and the investment of the funds;
- 15 (9) The appointment of a fiscal agent and the determination of its powers and duties;
- 16 (10) Limitations on the power of the consortium to sell or otherwise dispose of its
17 properties;
- 18 (11) The preparation of annual budgets by the consortium and the employment of
19 consulting engineers and auditors;
- 20 (12) The rights and remedies of bondholders in the event of failure on the part of the
21 consortium to perform any agreement;
- 22 (13) Covenanting that as long as any bonds are outstanding the consortium shall use its
23 best efforts to establish and maintain its rates and charges adequate at all times to pay and provide
24 for all operating expenses of the consortium, all payments of principal, redemption premium, if
25 any, and interest on bonds, notes or other evidences of indebtedness of or assumed by the
26 consortium, all renewals, repairs, or replacements to the property of the consortium deemed
27 necessary, and all other amounts which the authority may by law, resolution or contract be
28 obligated to pay. On or before the last day of the consortium's fiscal year, the consortium shall
29 review the adequacy of its rates and charges to satisfy the above requirements for the next
30 succeeding fiscal year. If the review indicates that the rates and charges are, or are likely to be,
31 insufficient to meet the requirements of this chapter, the consortium shall promptly take such
32 steps as are permitted by law and as are necessary to cure or avoid the deficiency; and
- 33 (14) Any other matters, of like or different character, which in any way affect the security
34 or protection of the bonds.

1 **39-29.16. Short-term notes.** -- (a) Money borrowed by the consortium for the purpose of
2 providing temporary financing of a project or projects or combination of projects pending the
3 issuance of bonds or other notes, shall be evidenced by notes or other obligations. The principal
4 and interest of all notes or other obligations of the consortium issued under the provisions of this
5 section shall be payable no later than the fourth anniversary of the date of their issue, and shall be
6 payable from the following: (1) From the proceeds of bonds subsequently issued; or (2) From the
7 proceeds of subsequent borrowings which comply with the provisions hereof; or (3) From
8 revenues of the consortium which may be equal and proportionate with, but not superior to, that
9 securing bonds then outstanding or subsequently issued.

10 (b) Notwithstanding any other provisions of this chapter, the notes shall be deemed to be
11 negotiable instruments under the laws of the state of Rhode Island, subject only to the provisions
12 for registration contained in those laws. The notes or other obligations or any issue of these shall
13 be in a form and contain any other provisions as the corporation may determine and the notes or
14 resolutions or proceedings authorizing the notes or other obligations or any issue of these may
15 contain, in addition to any provisions, conditions, covenants, or limitations authorized by this
16 chapter, any provisions, conditions, covenants, or limitations which the corporation is authorized
17 to include in any resolution or resolutions authorizing bonds or notes or in any trust indenture
18 relating to bonds or notes. The consortium may issue the notes or other obligations in any manner
19 either publicly or privately on any terms as it may determine to be in its best interests. These
20 notes or other obligations may be issued under the provisions of this chapter without obtaining
21 the consent of any department, division, commission, board, body, or agency of the state, without
22 any other proceedings or the happening of any conditions or things other than those proceedings,
23 conditions, or things which are specifically required by this chapter and by the provisions and
24 resolutions authorizing the issuance of the notes or obligations.

25 **39-29.17. Tax exemption.** -- It is hereby declared that the consortium and the carrying
26 out of its purposes is in all respects for the benefit of the people of the state and for the
27 improvement of their health, welfare, and prosperity, and the consortium will be performing an
28 essential governmental function in the exercise of the powers conferred by this chapter, and the
29 state covenants with the holders of the bonds that the consortium shall be required to pay no taxes
30 or assessments or sums in lieu of taxes, except as provided in section 39-29-18, to the state or any
31 political subdivision thereof upon any of the property acquired by it or under its jurisdiction,
32 control, possession, or supervision or upon its activities in the operation and maintenance of the
33 property or upon any earnings, revenues, moneys, or other income derived by the consortium, and
34 that the bonds of the consortium and the income therefrom shall at all times be exempt from

1 taxation.

2 **39-29.18. Payments in lieu of taxes.** -- (a) The consortium shall pay annually, having
3 first made provision for the payment of operations and maintenance of the system and for the
4 payment of principal and interest on any bonds and any other charges payable from revenues due
5 as may be provided in any bond or trust indenture, in lieu of any property tax, as a charge upon its
6 earnings or revenues, to each town, city, or district such amount as shall have been agreed
7 between the town, city, or district and the consortium. If no agreement as to the amount to be
8 paid shall have been reached, then, if the town, city or district is a participating community or
9 located in a participating community, the consortium shall determine the amount to be paid or, if
10 the town, city, or district is not a participating community or located within a participating
11 community, the amount to be paid shall be a sum equal in amount to the property tax, if any,
12 levied on the acquired property by the town, city, or district during the year next preceding the
13 acquisition of such property by the consortium. As used in this section the term “participating
14 community” includes any town or city that has ever been a participating community.

15 (b) The consortium shall have no power to levy or collect ad valorem property taxes.

16 **39-29.19. Relations with municipalities.** -- (a) The consortium shall plan, construct,
17 reconstruct, rehabilitate, alter, improve, develop, maintain, and operate projects in conformity
18 with the applicable zoning or other land use ordinances, codes, plans, or regulations of any
19 municipality or political subdivision of the state in which those projects are situated.

20 (b) The consortium shall, in planning, constructing, reconstructing, rehabilitating,
21 altering, or improving any project, comply with all requirements of state and federal laws, codes,
22 or regulations applicable to that planning, construction, reconstruction, rehabilitation, alteration,
23 or improvement. The consortium shall adopt a comprehensive building code (which may, but
24 need not be, the BOCA Code) with which all projects shall comply. That adoption shall not
25 preclude the consortium's later adoption of a different comprehensive building code or of its
26 alteration, amendment, or supplementation of any comprehensive building code so adopted.
27 Except as otherwise specifically provided to the contrary, no municipality or other political
28 subdivision of the state shall have the power to modify or change in whole or in part the
29 drawings, plans, or specifications for any project of the consortium; nor to require that any
30 person, firm, or corporation employed with respect to that project perform work in any other or
31 different manner than that provided by those drawings, plans, and specifications; nor to require
32 that any such person, firm, or corporation obtain any approval, permit, or certificate from the
33 municipality or political subdivision in relation to the project; and the doing of that work by any
34 person, firm, or corporation in accordance with the terms of those drawings, plans, specifications,

1 or contracts shall not subject the person, firm, or corporation to any liability or penalty, civil or
2 criminal, other than as may be stated in the contracts or may be incidental to the proper
3 enforcement thereof; nor shall any municipality or political subdivision have the power to require
4 the consortium, or any lessee or successor in interest, to obtain any approval, permit, or certificate
5 from the municipality or political subdivision as a condition of owning, using, maintaining,
6 operating, or occupying any project acquired, constructed, reconstructed, rehabilitated, altered, or
7 improved by the consortium or pursuant to drawings, plans, and specifications made or approved
8 by the consortium; provided, however, that nothing contained in this subsection shall be deemed
9 to relieve any person, firm, or corporation from the necessity of obtaining from any municipality
10 or other political subdivision of the state any license which, but for the provisions of this chapter,
11 would be required in connection with the rendering of personal services or sale at retail of
12 tangible personal property other than electricity.

13 (c) Except to the extent that the consortium shall expressly otherwise agree, a
14 municipality or political subdivision, including, but not limited to, a town, city, or district in
15 which a project of the consortium is located, shall provide for the project, whether then owned by
16 the consortium or any successor in interest, police, fire, sanitation, health protection, and other
17 municipal services of the same character and to the same extent as those provided for other
18 residents of that municipality or political subdivision, but nothing contained in this section shall
19 be deemed to require any municipality or political subdivision to make capital expenditures for
20 the sole purpose of providing any of these services for that project.

21 (d) In carrying out a project, the consortium shall be empowered to enter into contractual
22 agreements with municipalities and public corporations and those municipalities and public
23 corporations are authorized and empowered, notwithstanding any other law, to enter into any
24 contractual agreements with the consortium and to do all things necessary to carry out their
25 obligations under the agreements.

26 (e) Notwithstanding the provisions of any general, special, or local law or charter,
27 municipalities and public corporations are empowered to purchase, or to lease for a term not
28 exceeding ninety-nine (99) years, projects of the consortium, upon any terms and conditions as
29 may be agreed upon by the municipality or public corporation and the consortium.

30 **39-29.20. Power of eminent domain.** – (a) If, for any of the purposes of this chapter, the
31 consortium shall find it necessary to acquire any real property, whether for immediate or future
32 use, the consortium may find and determine that the property, whether a fee simple absolute or a
33 lesser interest, is required for the acquisition, construction, or operation of a project, and upon
34 that determination, the property shall be deemed to be required for public use until otherwise

1 determined by the consortium; and with the exceptions hereinafter specifically noted, the
2 determination shall not be affected by the fact that the property has been taken for, or is then
3 devoted to, a public use; but the public use in the hands or under the control of the consortium
4 shall be deemed superior to the public use in the hands of any other person, association, or
5 corporation; provided further, however, that no real property or interest, estate, or right in real
6 property belonging to the state shall be acquired without consent of the state; and no real property
7 or interest, estate, or right in real property belonging to any municipality shall be acquired
8 without the consent of the municipality; and no real property, or interest or estate in real property
9 belonging to a public utility corporation may be acquired without the approval of the public
10 utility commission or another regulatory body having regulatory power over the public utility
11 corporation.

12 (b) The consortium may proceed to acquire and is authorized to and may proceed to
13 acquire property, whether in fee simple absolute or a lesser interest, by the exercise of the right of
14 eminent domain in the manner prescribed in this chapter.

15 (c) Nothing contained in this section shall be construed to prohibit the consortium from
16 bringing any proceedings to remove a cloud on title or any other proceedings that it may, in its
17 discretion, deem proper and necessary, or from acquiring property by negotiation or purchase.

18 (d) The necessity for the acquisition of property under this chapter shall be conclusively
19 presumed upon the adoption by the board of a vote determining that the acquisition of the
20 property or any interest in property described in that vote is necessary for the acquisition,
21 construction, or operation of a project. Within six (6) months after its passage, the consortium
22 shall cause to be filed in the appropriate land evidence records a copy of its vote together with a
23 statement signed by the chairperson or vice-chairperson of the corporation that the property is
24 taken pursuant to this chapter, and also a description of the real property indicating the nature and
25 extent of the estate or interest in the estate taken and a plat of the real property, which copy of the
26 vote and statement of the chairperson or vice-chairperson shall be certified by the secretary of the
27 consortium and the description and plat shall be certified by the city or town clerk for the city or
28 town within which the real property lies.

29 (e) Forthwith thereafter the consortium shall cause to be filed in the superior court in and
30 for the county within which the real property lies a statement of the sum of money estimated to be
31 just compensation for the property taken, and shall deposit in the superior court to the use of the
32 persons entitled to the money the sum set forth in the statement. The consortium shall satisfy the
33 court that the amount deposited with the court is sufficient to satisfy the just claims of all persons
34 having an estate or interest in the real property. Whenever the consortium satisfies the court that

1 the claims of all persons interested in the real property taken have been satisfied, the unexpended
2 balance shall be ordered repaid forthwith to the consortium.

3 (f) Upon the filing of the copy of the vote, statement, description, and plat in the land
4 evidence records and upon the making of the deposit in accordance with the order of the superior
5 court, title to the real property in fee simple absolute or any lesser estate or interest specified in
6 the resolution shall vest in the consortium, and that real property shall be deemed to be
7 condemned and taken for the use of the consortium and the right to just compensation for the
8 condemned property shall vest in the persons entitled to compensation, and the consortium
9 thereupon may take possession of the real property. No sum paid unto the court shall be charged
10 with clerks' fees of any nature.

11 (g) After the filing of the copy of the vote, statement, description, and plat, notice of the
12 taking of that land or other real property shall be served upon the owners of, or persons having
13 any estate or interest in, the real property by the sheriff or his or her deputies of the county in
14 which the real estate is situated by leaving a true and attested copy of the vote, statement,
15 description, and plat with each of those persons personally, or at the last and usual place of abode
16 in this state with some person living there, and in case any of those persons are absent from this
17 state and have no last and usual place of abode therein occupied by any person, the copy shall be
18 left with the person or persons, if any, in charge of, or having possession of the real property
19 taken of the absent persons, and another copy shall be mailed to the address of the person, if the
20 address is known to the officer serving the notice.

21 (h) After the filing of the vote, description, and plat, the consortium shall cause a copy to
22 be published in some newspaper having general circulation in the city or town in which the real
23 property lies at least once a week for three (3) successive weeks.

24 (i) If any party shall agree with the consortium upon the price to be paid for the value of
25 the real property so taken and of appurtenant damage to any remainder or for the value of his or
26 her estate, right, or interest therein, the court, upon application of the parties in interest, may order
27 that the sum agreed upon be paid forthwith from the money deposited, as the just compensation to
28 be awarded in the proceedings; provided, however, that no payment shall be made to any official
29 or employee of the consortium for any property or interest in the property acquired from the
30 official or employee unless the amount of the payment is determined by the court to constitute
31 just compensation to be awarded in the proceedings.

32 (j) Any owner of, or person entitled to any estate or right in, or interested in any part of,
33 the real property taken, who cannot agree with the consortium upon the price to be paid for his or
34 her estate, right or interest in the real property taken and the appurtenant damage to the

1 remainder, may, within three (3) months after personal notice of the taking, or if he or she has no
2 personal notice, may within one year from the time the sum of money estimated to be just
3 compensation is deposited in the superior court to the use of the persons entitled to the
4 compensation, apply by petition to the superior court for the county in which the real property is
5 situated, setting forth the taking of his or her land or his or her estate or interest in these and
6 praying for an assessment of damages by the court or by a jury. Upon the filing of the petition,
7 the court shall cause twenty (20) days' notice of the pendency of a trial to be given to the
8 consortium by serving the chairperson or vice chairperson of the board with a certified copy of
9 the notice.

10 (k) After the service of notice, the court may proceed to the trial thereof. The trial shall be
11 conducted as other civil actions at law are tried. The trial shall determine all questions of fact
12 relating to the value of the real property, and any estate or interest, and the amount of this value
13 and the appurtenant damage to any remainder and the amount of this damage, and the trial and
14 decision or verdict of the court or jury shall be subject to all rights to except to rulings, to move
15 for new trial, and to appeal, as are provided by law. Upon the entry of judgment in those
16 proceedings, execution shall be issued against the money deposited in court and in default against
17 any other funds of the consortium not held in trust for the benefit of bondholders.

18 (l) In case two (2) or more petitioners make claim to the same real property, or to any
19 estate or interest, or to different estate or interests in the same real property, the court shall, upon
20 motion, consolidate their several petitions for trial at the same time, and may frame all necessary
21 issues for the trial.

22 (m) If any real property or any estate or interest in which any minor or other person not
23 capable in law to act on his or her own behalf is interested be taken under the provisions of this
24 chapter, the superior court, upon the filing of a petition by or in behalf of the minor or person or
25 by the consortium, may appoint a guardian ad litem for the minor or other person. Guardians
26 may, with the advice and consent of the superior court, and upon any terms as the superior court
27 may prescribe, release to the consortium all claims for damages for the land of the minor or other
28 person or for any estate or interest. Any lawfully appointed, qualified, and acting guardian or
29 other fiduciary of the estate of any minor or other person, with the approval of the court of
30 probate within this state having jurisdiction to authorize the sale of lands and properties within
31 this state of the minor or other person, may before the filing of any petition, agree with the minor
32 or other person for any taking of his or her real property or of his or her interest or estate, and
33 may, upon receiving the amount, release to the consortium all claims for damages for the minor
34 or other person for the taking.

1 (n) In case any owner of or any person having an estate or interest in the real property
2 fails to file his or her petition, superior court for the county in which the real property is situated,
3 in its discretion, may permit the filing of the petition within one year subsequent to the year
4 following the time of the deposit in the superior court of the sum of money estimated to be just
5 compensation for the property taken; provided, the person shall have had no actual knowledge of
6 the taking of the land in season to file the petition; and provided, no other person or persons
7 claiming to own the real property or estate or interest shall have been paid the value; and
8 provided, no judgment has been rendered against the corporation for the payment of the value to
9 any other person or persons claiming to own the real estate.

10 (o) If any real property or any estate or interest is unclaimed or held by a person or
11 persons whose whereabouts are unknown, after making inquiry satisfactory to the superior court
12 for the county in which the real property lies, the consortium, after the expiration of two (2) years
13 from the first publication of the copy of the vote, statement, description, and plat, may petition the
14 court that the value of the estate or interest of the unknown person or persons be determined.
15 After the notice by publication to any person or persons that the court in its discretion may order,
16 and after a hearing on the petition, the court shall fix the value of the estate or interest and shall
17 order the sum to be deposited in the registry of the court in a special account to accumulate for
18 the benefit of the person or persons, if any, entitled to it. The receipt of the clerk of the superior
19 court shall constitute a discharge of the corporation from all liability in connection with the
20 taking. When the person entitled to the money deposited shall have satisfied the superior court of
21 his or her right to receive that money, the court shall cause it to be paid over to him or her, with
22 all accumulations thereon.

23 (p) The superior court shall have power to make any orders with respect to
24 encumbrances, liens, taxes, and other charges on the land, if any, as shall be just and equitable.

25 (q) Whenever, in the opinion of the consortium, a substantial savings in the cost of
26 acquiring title can be effected by conveying other real property, title to which is in the
27 consortium, to the person or persons from whom the estate or interest in real property is being
28 purchased or taken, or by the construction or improvement by the consortium of any work or
29 facility upon the remaining real property of the person or persons from whom the estate or
30 interest in real property is being purchased or taken, the consortium shall be and hereby is
31 authorized to convey that other real property to the person or persons from whom the estate or
32 interest in real property is being purchased or taken and to construct or improve any work or
33 facility upon the remaining land of the person or persons.

34 (r) At any time during the pendency of any proceedings for the assessment of damages

1 for property or interests taken or to be taken by eminent domain by the consortium, the
2 consortium or any owner may apply to the court for an order directing an owner or the
3 consortium, as the case may be, to show cause why further proceedings should not be expedited,
4 and the court may upon that application make an order requiring that the hearings proceed and
5 that any other steps be taken with all possible expedition.

6 **39-29.21. Pledge not to alter rights of consortium.** -- The state does hereby pledge to
7 and agree with the holders of the bonds, notes, and other evidences of indebtedness issued for the
8 benefit of the consortium that the state will not limit or alter rights hereby vested in the
9 consortium until the bonds, notes, or other evidences of indebtedness, together with interest
10 thereon, with interest on any unpaid installment of interest and all costs and expenses in
11 connection with any actions or proceedings by or on behalf of the bondholders, are fully met and
12 discharged.

13 **39-29.22. Money of consortium.** -- All money of the consortium, from whatever source
14 derived, shall be paid to the treasurer of the consortium. The money on receipt shall be deposited
15 forthwith in a separate bank account or accounts. The money in the accounts shall be paid out on
16 check of the treasurer, on requisition by the consortium, or of such other person or persons as the
17 consortium may authorize to make the requisitions. All deposits of money shall be secured by
18 obligations of the United States, or of the state, of a market value equal at all times to the amount
19 of deposits, and all banks and trust companies are authorized to give security for the deposits. The
20 consortium shall have power, notwithstanding the provisions of this section, to contract in any
21 loan or other financing agreement as to the custody, collection, security, investment, and payment
22 of any money of the consortium, or any money held in trust or otherwise for the payment of
23 bonds or in any way to secure a loan or other financing agreement, and to carry out any loan or
24 other financing agreement notwithstanding that the agreement may be inconsistent with the
25 previous provisions of this section. Money held in trust or otherwise for the payment of bonds or
26 in any way to secure the consortium's obligations and any loan or other financing agreement and
27 deposits of money may be secured in the same manner as money of the consortium, and all banks
28 and trust companies are authorized to give security for the deposits.

29 **39-29.23. Distribution of surpluses.** -- (a) The board may determine that all of the funds
30 of the consortium in excess of any reserves required to be maintained under any agreement with
31 bondholders or with the provider of any grant or by resolution of the board are surplus to the
32 needs of the consortium. The board may further resolve by a two-thirds (2/3) vote that some or
33 all of such surplus shall be distributed to the participating communities in such allocation as the
34 board shall determine to be fair and equitable.

1 **39-29.24. Beneficial ownership of eligible net metering resources.** -- The consortium
2 shall be trustee of the eligible net metering resources to which it holds title for the benefit of the
3 participating towns and cities or, if some eligible net metering resources have been designated to
4 particular participating towns or cities, and other net metering resources have not been so
5 designated, the designated resources shall be held for the benefit of the designated towns or cities
6 and the undesignated resources shall be held for the benefit of the remaining participating towns
7 and cities.

8 **39-29.25. Withdrawal.** -- The bylaws may permit any participating community to
9 withdraw from participation in the consortium, provided that the withdrawing town or city has
10 paid or made adequate arrangements to pay its share of all liabilities of the consortium. The
11 bylaws may provide that, upon such withdrawal and payment and satisfaction of such other
12 conditions as may be set forth therein, the consortium shall transfer to the withdrawing town or
13 city legal title to the eligible net metering resources (or interests therein) which the consortium
14 therefore held for the benefit of the withdrawing town or city.

15 **39-29.26. Transfer on dissolution.** -- If the consortium shall be dissolved, all funds of
16 the consortium, not required for the payment of bonds or other debts of the consortium, the
17 disposition of which is not otherwise governed by contracts to which the consortium may be
18 party, shall be paid to the participating towns and cities in accordance with their beneficial
19 interests therein.

20 **39-29.27. Right to alter, amend, or repeal chapter.** -- The right to alter, amend, or
21 repeal this chapter is hereby expressly reserved, but no such alteration, amendment, or repeal
22 shall operate to impair the obligation of any contract made by the consortium under any power
23 conferred by this chapter.

24 **39-29.28. Severability.** -- If any section, clause, provision, or term of this chapter shall
25 be declared unconstitutional and ineffective in whole or in part, then to the extent that it is not
26 unconstitutional and ineffective it shall be valid and effective and no other section, clause,
27 provision, or term shall on account thereof be deemed invalid or ineffective.

28 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 PUBLIC UTILITIES AND CARRIERS

1 This act would establish the East Bay Energy Consortium Board. The purpose of the
2 Board would be to explore and promote the use of alternative, renewable energy sources in the
3 communities of the East Bay. The Board would also have certain powers to accomplish this
4 purpose, including but not limited to the authority to issue bonds and the power of eminent
5 domain.

6 This act would take effect upon passage.

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