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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: Senator Louis P. DiPalma

Date Introduced: April 12, 2012

Referred To: Senate Environment & Agriculture

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 39 of the General Laws entitled "PUBLIC UTILITIES AND  
2 CARRIERS" is 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 and may be cited as the “East Bay  
6 Energy Consortium Act”.

7 **39-29-2. Legislative findings.** – Recognizing the importance of protecting, maintaining  
8 and utilizing all sources of energy for the generation of electricity and recognizing the importance  
9 of developing facilities in the east bay for the generation of electrical energy from sources not  
10 primarily dependent on fossil fuels, there is a need for municipal participation in the development  
11 of such facilities. Accordingly, the general assembly hereby finds and declares that:

12 (1) The overuse of fossil fuels for the production of electricity is detrimental to the  
13 environment of Rhode Island.

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

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

18 (4) The state and its citizens would be better served and its environment enhanced by the  
19 development of facilities for the generation of electricity through alternative energy sources.

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

3           **39-29-3. Definitions.** – (a) “Alternative Energy Sources” means any renewable energy  
4 resource including, without limitation, geothermal and tidal energy, and any other fuel or energy  
5 source but otherwise excluding fossil fuels, nuclear energy, and hydroelectric energy.

6           (b) “Board” means the board of delegates of the east bay energy consortium board  
7 created by section 39-29-5.

8           (c) “Bonds” means bonds, notes, or other obligations issued by the consortium.

9           (d) “Consortium” means the east bay energy consortium.

10          (e) “Eligible net metering resource” shall have the meaning ascribed thereto by section  
11 39-26.4-2.

12          (f) “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, Warren, and the  
15 eligible cities are East Providence and Newport.

16          (g) “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          (h) “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 board  
30 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 the consortium's activities for the preceding fiscal  
9 year. Each report shall set forth a complete operating and financial statement covering its  
10 operations during the year. The consortium shall cause an annual audit of the books, records, and  
11 accounts of 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 of consortium.** – The consortium shall have power:

34 (1) To make and alter bylaws, not inconsistent with this chapter or with the laws of this

1 state, for the administration and regulation of its business and affairs;

2 (2) To adopt and alter a corporate seal;

3 (3) To sue, be sued, complain and defend in its name in all courts;

4 (4) To be a promoter, partner, member, associate, or manager of any partnership,  
5 enterprise, or venture; provided, however, that the consortium shall not have any power to create,  
6 empower or otherwise establish any corporation, subsidiary corporation, corporate body, any  
7 form of partnership, or any other separate entity without the express approval and authorization of  
8 the general assembly;

9 (5) To transact its business, carry on its operations and have and exercise the powers  
10 granted by this chapter;

11 (6) To contract and incur liabilities in its own name for any lawful purpose which would  
12 effectuate the provisions of this chapter; to execute all instruments necessary to carry out the  
13 purposes of this chapter; and to do all things necessary or convenient to carry out the powers  
14 expressly granted by this chapter; provided, however, that the full faith, credit, and taxing power  
15 of the state shall never be pledged, nor shall any bond, note, or other evidence of indebtedness of  
16 the consortium constitute an obligation of the state;

17 (7) To indemnify and advance expenses to any delegate, officer, agent or employee, past  
18 or present, to the same extent as a corporation formed under chapter 1.2 of title 7 may indemnify  
19 any of its delegates, officers or agents and subject to the standards and restrictions, if any, set  
20 forth in its bylaws and to purchase and maintain insurance on behalf of any delegate, manager,  
21 agent or employee against any liability asserted against him or her and incurred by the delegate,  
22 manager, agent or employee in that capacity or arising out of the delegate's, manager's, agent's or  
23 employee's status, whether or not the consortium would have the power to indemnify under the  
24 provisions of this section, the articles of organization or operating agreement;

25 (8) To pay pensions and establish pension plans, pension trusts, profit sharing plans and  
26 other incentive and benefit plans for any or all of its agents and employees;

27 (9) To provide insurance for its benefit on the life of any of its agents or employees;

28 (10) To elect or appoint agents and define their duties and fix their compensation;

29 (11) To engage the services of consultants on a contractual basis for rendering  
30 professional and technical assistance and advice, and to employ architects, engineers, attorneys,  
31 accountants, construction, and financial experts and any other advisors, consultants, and agents as  
32 may be necessary in his or her judgment, and to fix their compensation;

33 (12) To invest any funds of the consortium, including funds held in reserve or sinking  
34 funds, or any moneys not required for immediate use or disbursement at the discretion of the

1 consortium, in:

2 (i) Obligations of the state or the United States;

3 (ii) Obligations of the principal and interest of which are guaranteed by the state or the

4 United States;

5 (iii) Obligations of agencies and instrumentalities of the state or the United States;

6 (iv) Certificates of deposits of banks and trust companies or shares of building loan

7 associations organized under the laws of the state or doing business in the state; or

8 (v) Any obligations, securities, and other investments as shall be specified in resolutions

9 of the consortium, and to take and hold real and personal property as security for the payment of

10 amounts lent or invested;

11 (13) To purchase, take, receive, lease, or otherwise acquire, own, hold, improve, use, and

12 otherwise deal in and with, real or personal property, or any interest in real or personal property,

13 wherever situated, to obtain options for the acquisition thereof and to mortgage or pledge the

14 same. If the consortium deems it advisable, to acquire any property through the purchase of stock

15 and obligations of a corporation owning the property and the dissolution of the corporation. The

16 owner or owners of any property which the consortium is herein authorized to acquire are hereby

17 authorized to sell or otherwise transfer the same to the consortium, and in the case of a sale or

18 other transfer of property pursuant to this provision it shall be lawful to dissolve the corporation,

19 notwithstanding any provision of the general or public laws to the contrary.

20 (14) To make and execute agreements of lease, conditional sales contracts, installment

21 sales contracts, loan agreements, mortgages, construction contracts, operation contracts, and other

22 contracts and instruments necessary or convenient in the exercise of the powers and functions of

23 the corporation granted by this chapter.

24 (15) To own and operate, maintain, repair, improve, enlarge, and extend, in accordance

25 with the provisions of this chapter, any property acquired and conduct its activities within or

26 without the state all of which, together with the acquisition of the property, are hereby declared to

27 be public purposes.

28 (16) To sell, transfer and dispose of any property, real, personal, or mixed, or interest

29 therein when no longer needed for its purposes, to grant options for the purchase of such;

30 provided, however, that in the case of any sale or proposed sale of any real property hereunder,

31 the consortium shall first grant to the city or town in which the real property, or any part thereof,

32 is situated (if such town or city is located in Rhode Island) the right to purchase the real property,

33 or portion thereof situated within its boundaries, upon the same terms and conditions as the

34 consortium offers or proposes to offer to any other prospective purchaser.

1           (17) To produce electricity within or without the territorial limit of the participating cities  
2 and towns; provided, however, that the primary fuels or other energy sources for the production  
3 of electricity shall be alternative energy sources.

4           (18) To distribute and sell electricity within the territorial limit of the participating towns  
5 and cities.

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

19           (20) To enter into any net metering arrangement. If the consortium enters into a net  
20 metering arrangement on its own behalf, all municipal accounts of all participating communities  
21 shall be treated as accounts eligible for net metering within an eligible net metering system site, if  
22 the consortium enters into a net metering arrangement on behalf of one or more but less than all  
23 participating communities:

24           (i) The consortium shall designate the specific eligible net metering resources to which  
25 the arrangement applies electric distribution;

26           (ii) Only municipal accounts of the towns and cities on whose behalf the arrangement is  
27 made shall be treated as accounts eligible for net metering with respect to the designated  
28 resources; and

29           (iii) The net metering arrangement may contain provisions designed to prevent netting of  
30 excess consumption by one participating community against excess production of another  
31 participating community or production by the towns and cities on behalf of which the  
32 arrangement is not made, under such conditions and circumstances as may be specified in the  
33 arrangement, and such provisions shall be applicable to the participating communities on behalf  
34 of which the arrangement was not made as well as the towns and cities on behalf of which the

1 arrangement was made; provided, that on request of any participating town or city or the electric  
2 distributing company the commission shall have the authority to make the determination whether  
3 specific provisions are appropriate and fair.

4 (21) To borrow money through the Rhode Island economic development corporation for  
5 any of its corporate purposes, including the creation and maintenance of working capital, and to  
6 issue negotiable bonds, notes, or other obligations and to fund or refund the same.

7 (22) Subject to the provisions of any contract with note holders or bond holders, to  
8 consent to the modification, with respect to rate of interest, time of payments of any installment  
9 of principal or interest, security or any other term of any mortgage, mortgage loan, mortgage loan  
10 commitment, contract, or agreement of any kind to which the corporation is a party.

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

17 (24) To contract for and to accept any gifts or grants or loans or funds or property or  
18 financial or other assistance in any form from the United States or any agency or instrumentality  
19 of the United States or from the state or any agency or instrumentality of the state or from any  
20 other source and to comply, subject to the provisions of this chapter, with the terms and  
21 conditions of this contract.

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

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

29 (27) To have and exercise all powers necessary to effect its purposes.

30 **39-29-11. Application of public utility law – Rate determination.** – Chapters 1 through  
31 5 of this title shall not apply to the consortium created by this chapter.

32 **39-29-12. Power to issue bonds – Pledge of revenues.** – The consortium shall have the  
33 power and is hereby authorized from time to time to issue its negotiable bonds for any of its  
34 purposes and to secure the payment of the bonds as may be provided in the resolution or

1 resolutions authorizing the bonds. Projects undertaken by the consortium to develop, maintain, or  
2 utilize eligible net metering resources shall not be considered to be essential public facilities for  
3 purposes of chapter 35-18.

4 **39-29-13. Security for bonds or notes.** – (a) The principal of and interest on any bonds  
5 or notes issued by the consortium may be secured by a pledge of any or all revenues and receipts  
6 of the consortium and may be secured by a mortgage or other instrument covering all or any part  
7 of one or more projects, including all or part of any additions, improvements, extensions to, or  
8 enlargements of projects thereafter made.

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

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

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

32 (e) The consortium may provide in any proceedings under which bonds or notes may be  
33 authorized that any project or part of a project may be constructed, reconstructed, rehabilitated, or  
34 improved by the consortium, or any lessee, vendee, obligor, or any designee of the consortium



1 and may also provide in those proceedings for the time and manner of and requisitions for  
2 disbursements to be made for the cost of the construction, and for any certificates and approvals  
3 of construction and disbursements that the corporation shall deem necessary and provide for in  
4 those proceedings.

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

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

13 **39-29-14. Terms and sale of bonds -- Refunding.** – (a) The consortium is hereby  
14 authorized to provide by resolution for the issuance, at one time or from time to time, of revenue  
15 bonds of the authority for the purpose of paying all or part of the cost to acquire, construct,  
16 reconstruct, rehabilitate, improve, or maintain any property necessary or desirable for the  
17 purposes of the authority. The bonds shall be authorized by resolution of the board, and shall bear  
18 such date or dates, mature at such time or times not exceeding forty (40) years from their date,  
19 bear interest at such rate or rates payable at such time or times, be in such denominations, be in  
20 such form, either coupon or registered, carry such registration privileges and such privileges of  
21 reconversion from registered to coupon form, be executed in such manner, be payable in such  
22 medium of payment, at such place or places and be subject to redemption at such premium, if  
23 required, and on such terms, as the resolution may provide. The consortium may purchase or  
24 otherwise acquire or require bond insurance, letters of credit, lines of credit or such other  
25 instruments or securities to insure the timely payment of principal, interest, and/or redemption  
26 premium on the bonds.

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

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

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

32           **39-29-15. Covenants permissible in bond resolution.** – Any resolution or resolutions  
33 authorizing any bonds or any issue of bonds may contain provisions which shall be a part of the  
34 contract with the holders of the bonds thereby authorized, as to:

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

1 insufficient to meet the requirements of this chapter, the consortium shall promptly take such  
2 steps as are permitted by law and as are necessary to cure or avoid the deficiency.

3 (14) Any other matters, of like or different character which in any way affect the security  
4 or protection of the bonds.

5 **39-29-16. Short-term notes.** – Money borrowed by the consortium for the purpose of  
6 providing temporary financing of a project or projects or combination of projects pending the  
7 issuance of bonds or other notes, shall be evidenced by notes or other obligations. The principal  
8 and interest of all notes or other obligations of the consortium issued under the provisions of this  
9 section shall be payable no later than the fourth anniversary of the date of their issue, and shall be  
10 payable from the following:

11 (1) From the proceeds of bonds subsequently issued; or

12 (2) From the proceeds of subsequent borrowings which comply with the provisions  
13 hereof; or

14 (3) From revenues of the consortium which may be equal and proportionate with, but not  
15 superior to, that securing bonds then outstanding or subsequently issued. Notwithstanding any  
16 other provisions of this chapter, the notes shall be deemed to be negotiable instruments under the  
17 laws of the state of Rhode Island subject only to the provisions for registration contained in those  
18 laws. The notes or other obligations or any issue of these shall be in a form and contain any other  
19 provisions as the corporation may determine and the notes or resolutions or proceedings  
20 authorizing the notes or other obligations or any issue of these may contain, in addition to any  
21 provisions, conditions, covenants, or limitations authorized by this chapter, any provisions,  
22 conditions, covenants, or limitations which the corporation is authorized to include in any  
23 resolution or resolutions authorizing bonds or notes or in any trust indenture relating to bonds or  
24 notes. The consortium may issue the notes or other obligations in any manner either publicly or  
25 privately on any terms as it may determine to be in its best interests. These notes or other  
26 obligations may be issued under the provisions of this chapter without obtaining the consent of  
27 any department, division, commission, board, body, or agency of the state, without any other  
28 proceedings or the happening of any conditions or things other than those proceedings,  
29 conditions, or things which are specifically required by this chapter and by the provisions and  
30 resolutions authorizing the issuance of the notes or obligations.

31 **39-29-17. Tax exemption.** – It is hereby declared that the consortium and the carrying  
32 out of its purposes is in all respects for the benefit of the people of the state and for the  
33 improvement of their health, welfare, and prosperity, and the consortium will be performing an  
34 essential governmental function in the exercise of the powers conferred by this chapter, and the

1 state covenants with the holders of the bonds that the consortium shall be required to pay no taxes  
2 or assessments or sums in lieu of taxes, except as provided in section 39-29-18, to the state or any  
3 political subdivision thereof upon any of the property acquired by it or under its jurisdiction,  
4 control, possession, or supervision or upon its activities in the operation and maintenance of the  
5 property or upon any earnings, revenues, moneys, or other income derived by the consortium, and  
6 that the bonds of the consortium and the income therefrom shall at all times be exempt from  
7 taxation.

8 **39-29-18. State and municipalities not liable -- Exceptions.** – Except for any guarantee  
9 by a participating community entered into pursuant to the provisions of subsection 39-29-13(g),  
10 neither the state nor any municipality is liable for the payment of the principal of or interest on  
11 any bonds or notes of the consortium, or for the performance of any pledge, mortgage, obligation,  
12 or agreement of any kind whatsoever which may be undertaken by the consortium, and none of  
13 the bonds or notes of the consortium nor any of its agreements or obligations, except to the extent  
14 so guaranteed, shall be construed to constitute an indebtedness of the state or any municipality  
15 within the meaning of any constitutional or statutory provision whatsoever, nor shall the issuance  
16 of bonds or notes under the provisions of this chapter, directly, indirectly, or contingently, except  
17 to the extent so guaranteed, obligate the state or any municipality or political subdivision thereof  
18 to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their  
19 payment.

20 **39-29-19. Payments in lieu of taxes.** – (a) The consortium shall pay annually, having  
21 first made provision for the payment of operations and maintenance of the system and for the  
22 payment of principal and interest on any bonds and any other charges payable from revenues due  
23 as may be provided in any bond or trust indenture, in lieu of any property tax, as a charge upon its  
24 earnings or revenues, to each town, city, or district such amount as shall have been agreed  
25 between the town, city, or district and the consortium. If no agreement as to the amount to be paid  
26 shall have been reached, then, if the town, city or district is a participating community or located  
27 in a participating community, the consortium shall determine the amount to be paid or, if the  
28 town, city, or district is not a participating community or located within a participating  
29 community, the amount to be paid shall be a sum equal in amount to the property tax, if any,  
30 levied on the acquired property by the town, city, or district during the year next preceding the  
31 acquisition of such property by the consortium. As used in this section the term “participating  
32 community” includes any town or city that has ever been a participating community.

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

34 **39-29-20. Relations with municipalities.** – (a) The consortium shall plan, construct,

1 reconstruct, rehabilitate, alter, improve, develop, maintain, and operate projects in conformity  
2 with the applicable zoning or other land use ordinances, codes, plans, or regulations of any  
3 municipality or political subdivision of the state in which those projects are situated.

4 (b) The consortium shall, in planning, constructing, reconstructing, rehabilitating,  
5 altering, or improving any project, comply with all requirements of state and federal laws, codes,  
6 or regulations applicable to that planning, construction, reconstruction, rehabilitation, alteration,  
7 or improvement. The consortium shall adopt a comprehensive building code (which may, but  
8 need not be, the Building Officials Code Administrators International) with which all projects  
9 shall comply. That adoption shall not preclude the consortium's later adoption of a different  
10 comprehensive building code or of its alteration, amendment, or supplementation of any  
11 comprehensive building code so adopted. Except as otherwise specifically provided to the  
12 contrary, no municipality or other political subdivision of the state shall have the power to modify  
13 or change in whole or in part the drawings, plans, or specifications for any project of the  
14 consortium; nor to require that any person, firm, or corporation employed with respect to that  
15 project perform work in any other or different manner than that provided by those drawings,  
16 plans, and specifications; nor to require that any such person, firm, or corporation obtain any  
17 approval, permit, or certificate from the municipality or political subdivision in relation to the  
18 project; and the doing of that work by any person, firm, or corporation in accordance with the  
19 terms of those drawings, plans, specifications, or contracts shall not subject the person, firm, or  
20 corporation to any liability or penalty, civil or criminal, other than as may be stated in the  
21 contracts or may be incidental to the proper enforcement thereof nor shall any municipality or  
22 political subdivision have the power to require the consortium, or any lessee or successor in  
23 interest, to obtain any approval, permit, or certificate from the municipality or political  
24 subdivision as a condition of owning, using, maintaining, operating, or occupying any project  
25 acquired, constructed, reconstructed, rehabilitated, altered, or improved by the consortium or  
26 pursuant to drawings, plans, and specifications made or approved by the consortium; provided,  
27 however, that nothing contained in this subsection shall be deemed to relieve any person, firm, or  
28 corporation from the necessity of obtaining from any municipality or other political subdivision  
29 of the state any license which, but for the provisions of this chapter, would be required in  
30 connection with the rendering of personal services or sale at retail of tangible personal property  
31 other than electricity.

32 (c) Except to the extent that the consortium shall expressly otherwise agree, a  
33 municipality or political subdivision, including, but not limited to, a town, city, or district in  
34 which a project of the consortium is located, shall provide for the project, whether then owned by

1 the consortium or any successor in interest, police, fire, sanitation, health protection, and other  
2 municipal services of the same character and to the same extent as those provided for other  
3 residents of that municipality or political subdivision, but nothing contained in this section shall  
4 be deemed to require any municipality or political subdivision to make capital expenditures for  
5 the sole purpose of providing any of these services for that project.

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

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

15 **39-29-21. Power of eminent domain.** – (a) If, for any of the purposes of this chapter, the  
16 consortium shall find it necessary to acquire any real property lying within any participating  
17 community, whether for immediate or future use, the consortium may find and determine that the  
18 property, whether a fee simple absolute or a lesser interest, is required for the acquisition,  
19 construction, or operation of a project, and upon that determination, the property shall be deemed  
20 to be required for public use until otherwise determined by the consortium; and with the  
21 exceptions hereinafter specifically noted, the determination shall not be affected by the fact that  
22 the property has been taken for, or is then devoted to, a public use; but the public use in the hands  
23 or under the control of the consortium shall be deemed superior to the public use in the hands of  
24 any other person, association, or corporation; provided further, however, that no real property or  
25 interest, estate, or right in real property belonging to the state shall be acquired without consent of  
26 the state; and no real property or interest, estate, or right in real property belonging to any  
27 municipality shall be acquired without the consent of the municipality; and no real property, or  
28 interest or estate in real property belonging to a public utility corporation may be acquired  
29 without the approval of the public utility commission or another regulatory body having  
30 regulatory power over the public utility corporation.

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

34 (c) Nothing contained in this section shall be construed to prohibit the consortium from

1 bringing any proceedings to remove a cloud on title or any other proceedings that it may, in its  
2 discretion, deem proper and necessary, or from acquiring property by negotiation or purchase.

3 (d) The necessity for the acquisition of property under this chapter shall be conclusively  
4 presumed upon the adoption as hereinafter described by the board of a vote determining that the  
5 acquisition of the property or any interest in property described in that vote is necessary for the  
6 acquisition, construction, or operation of a project. Within six (6) months after its passage, the  
7 consortium shall cause to be filed in the appropriate land evidence records a copy of its vote  
8 together with a statement signed by the chairperson or vice-chairperson of the consortium that the  
9 property is taken pursuant to this chapter, and also a description of the real property indicating the  
10 nature and extent of the estate or interest in the estate taken and a plat of the real property, which  
11 copy of the vote and statement of the chairperson or vice-chairperson shall be certified by the  
12 secretary of the consortium and the description and plat shall be certified by the city or town clerk  
13 for the city or town within which the real property lies.

14 (e) The vote described in subsection (d) shall be adopted only by a majority of the  
15 members of the board who are duly qualified and serving as such (whether or not present at the  
16 meeting), which majority shall include the delegate representing the participating community in  
17 which the property to be taken lies; provided that, if no delegate (whether or not present at the  
18 meeting) represents that participating community, the vote may be adopted without the  
19 affirmative vote of a delegate from that participating community if, not less than forty-five (45)  
20 days nor more than one hundred eighty (180) days before the adoption of the vote, the board shall  
21 have given notice to the town or city council of that participating community that the board will  
22 be considering the acquisition of real property lying in the participating community. In those  
23 cases when notice to a participating community is required, the notice need not provide any  
24 details relating to any property under consideration other than that it is located in the participating  
25 community.

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

34 (g) Upon the filing of the copy of the vote, statement, description, and plat in the land



1 evidence records and upon the making of the deposit in accordance with the order of the superior  
2 court, title to the real property in fee simple absolute or any lesser estate or interest specified in  
3 the resolution shall vest in the consortium, and that real property shall be deemed to be  
4 condemned and taken for the use of the consortium and the right to just compensation for the  
5 condemned property shall vest in the persons entitled to compensation, and the consortium  
6 thereupon may take possession of the real property. No sum paid unto the court shall be charged  
7 with clerks' fees of any nature.

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

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

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

29 (k) Any owner of, or person entitled to any estate or right in, or interested in any part of,  
30 the real property taken, who cannot agree with the consortium upon the price to be paid for his or  
31 her estate, right or interest in the real property taken and the appurtenant damage to the  
32 remainder, may, within three (3) months after personal notice of the taking, or if he or she has no  
33 personal notice, may within one year from the time the sum of money estimated to be just  
34 compensation is deposited in the superior court for the use of the persons entitled to the

1 compensation, apply by petition to the superior court for the county in which the real property is  
2 situated, setting forth the taking of his or her land or his or her estate or interest in these and  
3 praying for an assessment of damages by the court or by a jury. Upon the filing of the petition,  
4 the court shall cause twenty (20) days' notice of the pendency of a trial to be given to the  
5 consortium by serving the chairperson or vice chairperson of the board with a certified copy of  
6 the notice.

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

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

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

32 (o) In case any owner of or any person having an estate or interest in the real property  
33 fails to file his or her petition, the superior court for the county in which the real property is  
34 situated, in its discretion, may permit the filing of the petition within one year subsequent to the

1 year following the time of the deposit in the superior court of the sum of money estimated to be  
2 just compensation for the property taken; provided, the person shall have had no actual  
3 knowledge of the taking of the land in season to file the petition; and provided, no other person or  
4 persons claiming to own the real property or estate or interest shall have been paid the value; and  
5 provided, no judgment has been rendered against the corporation for the payment of the value to  
6 any other person or persons claiming to own the real estate.

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

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

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

31 (s) At any time during the pendency of any proceedings for the assessment of damages  
32 for property or interests taken or to be taken by eminent domain by the consortium, the  
33 consortium or any owner may apply to the court for an order directing an owner or the  
34 consortium, as the case may be, to show cause why further proceedings should not be expedited,

1 and the court may upon that application make an order requiring that the hearings proceed and  
2 that any other steps be taken with all possible expedition.

3 **39-29-22. Pledge not to alter rights of consortium.** – The state does hereby pledge to  
4 and agree with the holders of the bonds, notes, and other evidences of indebtedness issued for the  
5 benefit of the consortium that the state will not limit or alter rights hereby vested in the  
6 consortium until the bonds, notes, or other evidences of indebtedness, together with interest  
7 thereon, with interest on any unpaid installment of interest and all costs and expenses in  
8 connection with any actions or proceedings by or on behalf of the bondholders, are fully met and  
9 discharged.

10 **39-29-23. Money of consortium.** – All money of the consortium, from whatever source  
11 derived, shall be paid to the treasurer of the consortium. The money on receipt shall be deposited  
12 forthwith in a separate bank account or accounts. The money in the accounts shall be paid out on  
13 check of the treasurer, on requisition by the consortium, or of such other person or persons as the  
14 consortium may authorize to make the requisitions. All deposits of money shall be secured by  
15 obligations of the United States, or of the state, of a market value equal at all times to the amount  
16 of deposits, and all banks and trust companies are authorized to give security for the deposits. The  
17 consortium shall have power, notwithstanding the provisions of this section, to contract in any  
18 loan or other financing agreement as to the custody, collection, security, investment, and payment  
19 of any money of the consortium, or any money held in trust or otherwise for the payment of  
20 bonds or in any way to secure a loan or other financing agreement, and to carry out any loan or  
21 other financing agreement notwithstanding that the agreement may be inconsistent with the  
22 previous provisions of this section. Money held in trust or otherwise for the payment of bonds or  
23 in any way to secure the consortium's obligations and any loan or other financing agreement and  
24 deposits of money may be secured in the same manner as money of the consortium, and all banks  
25 and trust companies are authorized to give security for the deposits.

26 **39-29-24. Distribution of surpluses.** – (a) The board may determine that certain funds of  
27 the consortium in excess of any reserves required to be maintained under any agreement with  
28 bondholders or with the provider of any grant or by resolution of the board are surplus to the  
29 needs of the consortium. The board may further resolve by a two-thirds (2/3) vote that some or all  
30 of such surplus shall be distributed to the participating communities in such allocation as the  
31 board shall determine to be fair and equitable.

32 **39-29-25. Beneficial ownership of eligible net metering resources.** – The consortium  
33 shall be trustee of the eligible net metering resources to which it holds title for the benefit of the  
34 participating towns and cities or, if some eligible net metering resources have been designated to

1 particular participating towns or cities, and other net metering resources have not been so  
2 designated, the designated resources shall be held for the benefit of the designated towns or cities  
3 and the undesignated resources shall be held for the benefit of the remaining participating towns  
4 and cities.

5 **39-29-26. Withdrawal.** – The bylaws may permit any participating community to  
6 withdraw from participation in the consortium, provided that the withdrawing town or city has  
7 paid or made adequate arrangements to pay its share of all liabilities of the consortium. The  
8 bylaws may provide that, upon such withdrawal and payment and satisfaction of such other  
9 conditions as may be set forth therein, the consortium shall transfer to the withdrawing town or  
10 city legal title to the eligible net metering resources (or interests therein) which the consortium  
11 theretofore held for the benefit of the withdrawing town or city.

12 **39-29-27. Transfer on dissolution.** – If the consortium shall be dissolved, all funds of  
13 the consortium, not required for the payment of bonds or other debts of the consortium, the  
14 disposition of which is not otherwise governed by contracts to which the consortium may be  
15 party, shall be paid to the participating towns and cities in accordance with their beneficial  
16 interests therein.

17 **39-29-28. Right to alter, amend, or repeal chapter.** – The right to alter, amend, or  
18 repeal this chapter is hereby expressly reserved, but no such alteration, amendment, or repeal  
19 shall operate to impair the obligation of any contract made by the consortium under any power  
20 conferred by this chapter.

21 **39-29-29. Severability.** – If any section, clause, provision, or term of this chapter shall be  
22 declared unconstitutional and ineffective in whole or in part, then to the extent that it is not  
23 unconstitutional and ineffective it shall be valid and effective and no other section, clause,  
24 provision, or term shall on account thereof be deemed invalid or ineffective.

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

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LC02328  
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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO PUBLIC UTILITIES AND CARRIERS

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1           This act would create the East Bay Energy Consortium whereby the communities of the  
2 East Bay region of the state would be authorized to develop facilities for electrical generation  
3 using alternative energy sources.

4           This act would take effect upon passage.

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LC02328  
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