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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2013

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A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT -- STATE PURCHASES

Introduced By: Senators Sheehan, Ciccone, DiPalma, Sosnowski, and Lynch

Date Introduced: March 06, 2013

Referred To: Senate Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 42 of the General Laws entitled "State Affairs and Government" is  
2 hereby amended by adding thereto the following chapter:

3 CHAPTER 155

4 QUASI-PUBLIC CORPORATIONS

5 ACCOUNTABILITY AND TRANSPARENCY ACT

6 **42-155-1. Title.** – This chapter shall be known and may be cited as the "Quasi-Public  
7 Corporations Accountability and Transparency Act."

8 **42-155-2. Legislative findings.** – It is hereby found that:

9 (1) Quasi-public corporations are established and empowered by state law, and would not  
10 exist but for their relationship with the state.

11 (2) Quasi-public corporations perform essential government functions and/or provide  
12 essential government services.

13 (3) Many quasi-public corporations are granted the public power to collect fees and/or  
14 generate other revenue and incur debt.

15 (4) Quasi-public corporations manage significant public resources; however, the majority  
16 are exempt from many kinds of public oversight, such as executive and legislative budgetary  
17 review required of state agencies and departments.

18 (5) It is essential that quasi-public corporations provide more, not less transparency by  
19 making their decisions and budgets especially transparent and open to public scrutiny, and by

1 demonstrating a commitment to protecting the interests of Rhode Island taxpayers by achieving  
2 the highest standards of transparent, effective and ethical operation.

3 (6) Quasi-public corporations are governed by independent boards that serve a critical  
4 oversight function, and there exists a need to strengthen the ability of board members to carry out  
5 this oversight role.

6 (7) Rhode Island citizens rely on their government to provide oversight of quasi-public  
7 corporations, with a goal of ensuring that these state entities carry out their government missions  
8 effectively, and exemplify a commitment to transparent, accountable and effective government.

9 **42-155-3. Definitions.** – As used in this chapter: (a) "quasi-public corporation" means  
10 any body corporate and politic created or to be created pursuant to the general laws, including,  
11 without limitation, the following:

12 (1) Capital center commission;

13 (2) Rhode Island convention center authority;

14 (3) Rhode Island economic development corporation and any subsidiaries thereof,

15 including, but not limited to:

16 (i) Rhode Island industrial facilities corporation;

17 (ii) Rhode Island industrial-recreational building authority;

18 (iii) Rhode Island small business loan fund corporation;

19 (iv) Quonset point development corporation;

20 (v) Rhode Island airport corporation; and

21 (vi) I-195 redevelopment district commission;

22 (4) Rhode Island health and educational building corporation;

23 (5) Rhode Island housing and mortgage finance corporation;

24 (6) Rhode Island higher education assistance authority;

25 (7) Rhode Island student loan authority;

26 (8) Narragansett bay commission;

27 (9) Rhode Island clean water finance agency;

28 (10) Rhode Island water resources board;

29 (11) Rhode Island resource recovery corporation;

30 (12) Rhode Island public rail corporation;

31 (13) Rhode Island public transit authority;

32 (14) Rhode Island turnpike and bridge authority; and

33 (15) Rhode Island tobacco settlement financing corporation.

34 (b) Cities, towns, and any corporation created by a city or town pursuant to ordinance,

1 and fire and water districts are not subject to the provisions of this chapter.

2 **42-155-4. Role and responsibilities of board members.** – (a) Board members of quasi-  
3 public corporations shall:

4 (1) Execute direct oversight of the corporation and the chief executive and other  
5 management in the effective and ethical management of the corporation;

6 (2) Understand, review and monitor the implementation of fundamental financial and  
7 management controls and operational decisions of the corporation;

8 (3) Adopt a code of ethics applicable to each officer, director and employee of the  
9 corporation that, at a minimum, includes the standards established in chapter 14 of title 36 ("Code  
10 of Ethics");

11 (4) Adopt a mission statement expressing the purpose and goals of the corporation, a  
12 description of the stakeholders of the corporation and their reasonable expectations from the  
13 corporation and a list of measurements by which performance of the corporation and the  
14 achievement of its goals may be evaluated. Each corporation shall reexamine its mission  
15 statement at least once every three (3) years and publish a self-evaluation based on the stated  
16 measurements;

17 (5) Adopt an indemnification policy which shall be set forth in the by-laws of the  
18 corporation; and

19 (6) Perform each of their duties as a board members, including, but not limited to, those  
20 imposed by this section, in good faith and with that degree of diligence, care and skill which an  
21 ordinarily prudent person in like position would use under similar circumstances, and may take  
22 into consideration the views and policies of any elected official or body, or other person and  
23 ultimately apply independent judgment in the best interest of the quasi-public corporation, its  
24 mission and the public.

25 (b) Board members of quasi-public corporations shall establish and maintain written  
26 policies and procedures for the following:

27 (1) Internal accounting and administrative controls in accordance with the provisions of  
28 chapter 35-20, the ("Public Corporation Financial Integrity and Accountability Act");

29 (2) Travel, including lodging, meals and incidental expenses, requiring that each request  
30 for payment or reimbursement shall be supported by detailed documentation and an explanation  
31 of business purpose, that no reimbursement shall exceed the allowable state employee  
32 reimbursement amount per day, and that a board member shall be assigned to review and approve  
33 all out-of state travel expenses and requests for reimbursement prior to payment;

34 (3) Grants, charitable and civic donations and/or contributions, provided however that all

1 such grants, donations or contributions shall be voted by the full board during an open meeting  
2 and the vote shall be recorded in the minutes of the meeting, together with:

3 (i) The citation to the specific state statute authorizing the action;  
4 (ii) An explanation of how the grant, donation or contribution relates to the quasi-public  
5 corporation's mission;  
6 (iii) The identity of each board member or employee of the quasi-public corporation that  
7 will receive any benefit from the grant, donation or contribution including without limitation  
8 tickets to events, meals, and golfing;  
9 (iv) Any disclosure required by chapter 36-14 ("Code of Ethics"); and  
10 (v) Each such grant, donation or contribution shall be clearly identified in the financial  
11 statements of the quasi-public corporation.

12 (4) Credit card use, including that each credit card charge shall be supported by a detailed  
13 receipt and explanation of business purpose; provided, however that pursuant to 35-20-10, no  
14 credit card shall be used for personal use; and that a board member shall be assigned to review  
15 and approve all credit card statements prior to payment; the board shall also consider the use of  
16 purchase cards which allow the board to restrict the types and dollar amounts of purchases that  
17 can be made on the card as an alternative to credit card use;

18 (5) Employee reimbursement, including requests by management for business expenses,  
19 and expenses classified as gifts or entertainment; provided, however, that each request for  
20 reimbursement shall be supported by a detailed receipt and explanation of business purpose, that  
21 a board member shall be assigned to review and approve all requests for reimbursement prior to  
22 payment;

23 (6) Personnel, including hiring, dismissing, promoting and compensating employees of  
24 the quasi-public corporation; a requirement of board approval in an open meeting before a  
25 position may be created or a vacancy filled; and policies protecting employees from retaliation for  
26 disclosing information concerning acts of wrongdoing, misconduct, malfeasance, or other  
27 inappropriate behavior by an employee or board member of the quasi-public corporation;

28 (7) Marketing expenses, including that each marketing expense shall be supported by a  
29 detailed receipt and explanation of business purposes and provided further that each marketing  
30 expense shall be coded to a specific marketing goal to ensure that board members are informed of  
31 the expenses involved in a specific marketing promotion; and

32 (8) Lobbyists' expenses, including each request for reimbursement by a lobbyist which  
33 shall be supported by a detailed receipt and explanation of business purpose, and a board member  
34 shall be assigned to review and approve all requests for reimbursement prior to payment;

1 (c) The written policies and procedures required by this section shall be approved by the  
2 board during an open meeting and the vote shall be recorded in the minutes of the meeting.

3 (d) A board member shall serve no more than two (2) terms. Any board member as of  
4 July 1, 2013, who is serving beyond two (2) terms shall serve the remaining term of his or her  
5 current appointment, and shall not be eligible to serve any additional terms. The limitations of  
6 this provision shall not apply to exofficio members.

7 (e) Any board member who fails to attend more than fifty percent (50%) of all meetings  
8 held during any calendar year shall be deemed to have resigned, unless the board member  
9 requests in writing to the chairperson to serve the remaining term of his or her appointment,  
10 setting forth the reason or reasons for the absences, and the majority of the board members  
11 approve the request.

12 (f) No board member shall serve in a paid or voluntary capacity as an officer, employee  
13 or consultant of the corporation.

14 **42-155-5. Executive compensation.** – (a) Each quasi-public corporation shall establish a  
15 committee on executive compensation which shall meet independently of management and which  
16 shall:

17 (1) Recommend to the full board the compensation packages of the executive and senior  
18 management of the corporation. The compensation package of the executive officer shall be  
19 based on a comprehensive and objective analysis of comparable compensation of similar officers  
20 of state government, other authorities, quasi-public corporations, and private-sector employees  
21 with similar functions and responsibilities. The committee may retain a consultant to assist in the  
22 comparability study. When calculating compensation, the committee shall consider the value of  
23 the retirement plan in the overall compensation package.

24 (2) Prepare clear written job descriptions and clear written expectations of job  
25 performance for the executive officer and senior management;

26 (3) Conduct the job performance review of the executive officer at least annually; and

27 (4) Negotiate the employment contract of the executive officer which shall be approved  
28 by the full board during an open meeting.

29 (b) No employee of a state quasi-public corporation shall be compensated for sick,  
30 vacation, or other leave time to an extent greater than state employees, nor be granted severance  
31 pay after removal for cause, nor be granted severance pay in excess of three (3) months salary if  
32 removed other than for cause. Notwithstanding any general or specific provision to the contrary,  
33 the employment contract of the executive director of a quasi-public corporation shall constitute a  
34 public record within the meaning of chapter 38-2 ("Access to Public Records").

1 **42-155-6. Governance committee established.** – (a) The board members of each quasi-  
2 public corporation shall establish a governance committee.

3 (b) It shall be the responsibility of the governance committee to:

4 (1) Keep the board informed of current best practices;

5 (2) Review corporate governance trends;

6 (3) Recommend updates to the corporation’s corporate governance principles;

7 (4) Advise appointing authorities on the skills and experiences required of potential board  
8 members;

9 (5) Examine ethical and conflict of interest issues;

10 (6) Perform board self-evaluations and recommend by-laws which shall include rules;  
11 and

12 (7) Procedures for conduct of board business.

13 **42-155-7. Transparency requirements established.** – The following shall be public  
14 record, available to the public upon request and posted directly and not via link, on the website of  
15 each quasi-public corporation:

16 (1) Job descriptions of the executive director and management;

17 (2) Employment contracts of the executive director and management;

18 (3) Compensation comparability studies of the executive;

19 (4) Monthly financial statements;

20 (5) Capital improvement plans;

21 (6) Operating budgets;

22 (7) Strategic plan;

23 (8) Agendas and minutes of the open meetings of the board;

24 (9) Quarterly contracting reports required by 42-90-1;

25 (10) Regulations;

26 (11) Enabling legislation;

27 (12) Mission statement;

28 (13) Board members; and

29 (14) Organizational chart.

30 **42-155-8. Access to executive sessions of quasi-public corporations.** – (a) Within three  
31 (3) working days of a written request by the governor or his or her designee, or by the speaker of  
32 the house or his or her designee, or by the senate president or his or her designee, the quasi-public  
33 corporation shall furnish:

34 (1) A copy, whether approved by the quasi-public corporation or not, of the minutes of

1 any meeting, including any executive session of the quasi-public corporation; and

2 (2) The same information and documents in the same form as provided to the board  
3 members of any meeting, including any executive session of the quasi-public corporation.

4 (b) Access by the governor, by the speaker of the house or by the senate president or their  
5 designees to any confidential data shall not in any way change the confidential nature of the data  
6 obtained.

7 (c) The governor, the speaker of the house, the senate president or their designees shall be  
8 immune from any liability to any party for claims arising out of disclosure authorized by this  
9 section.

10 **42-155-9. Eminent domain procedure.** – In the exercise of its power of eminent  
11 domain, each quasi-public corporation shall be subject to the provisions of chapter 37-6.

12 **42-155-10. Audit of quasi-public corporations.** – (a) Commencing July 1, 2013, and  
13 every three (3) years thereafter, each quasi-public corporation shall be subject to a  
14 performance audit conducted in compliance with the generally acceptable governmental  
15 auditing standards, by the auditor general or a certified public accounting firm qualified in  
16 performance audits. The auditor general shall establish a rotating schedule identifying the  
17 year in which each quasi-public corporation shall be audited. The schedule shall be posted on  
18 the auditor general's website.

19 (b) If the audit is not directly performed by his or her office, the selection of the  
20 auditor and the scope of the audit shall be subject to the approval of the auditor general.

21 (c) Within thirty (30) days following the date of the issuance of the audit report, the board  
22 of the quasi-public corporation shall respond in writing to each recommendation made in the final  
23 audit report. This response shall address the quasi-public corporation's plan of implementation  
24 for each specific audit recommendation and, if applicable, the reasons for disagreement with any  
25 recommendation proposed in the audit report. The board's responses shall be included in the final  
26 audit report. Within one year following the date on which the final audit report was issued, the  
27 auditor general may perform a follow-up audit for the purpose of determining whether the quasi-  
28 public corporation has implemented, in an efficient and effective manner, its plan of action for the  
29 recommendations proposed in the audit report.

30 (d) The auditor general shall maintain a full record of each audit. In the event that  
31 information gathered as a result of an audit indicates that criminal activity may have occurred, the  
32 auditor general shall provide such information to a state or federal law enforcement agency. For  
33 any such information that is otherwise exempt from public disclosure under the provisions of  
34 chapter 38-2, the provision of such information to a law enforcement agency shall not be

1 construed to require that this information be further disclosed.

2 (e) Copies of each audit report, the written response to the audit report, and the results of  
3 each follow-up audit as set forth in subsection (d) herein shall be submitted to the governor, the  
4 speaker of the house and the senate president no later than three (3) days after issuance.

5 (f) Commencing January 1, 2014, and every year thereafter, each quasi-public  
6 corporation shall be assessed an amount not to exceed one-sixteenth (1/16) of one percent  
7 (1%) of its total annual revenue for the previous fiscal year. The assessments shall be placed  
8 in a restricted receipt account of the joint committee on legislative services for the sole  
9 purpose of covering the costs of the audits required by this section.

10 (g) The results of the audit shall be made public upon completion, posted on the  
11 websites of the auditor general and the quasi-public corporation.

12 **42-155-11. Outside employment.** – No employee of a quasi-public corporation may  
13 accept outside employment which will impair his or her judgment as to duties and  
14 responsibilities in the course of employment with the quasi-public corporation. Generally,  
15 outside employment is barred if the private employer can benefit from the official actions of  
16 the employee of the quasi-public corporation.

17 **42-155-12. Purchases.** – Notwithstanding any other provision of the general or public  
18 laws, to the contrary, the corporation shall be considered a public agency and subject to the  
19 provisions of chapter 37-2 ("State Purchases").

20 **42-155-13. Rules and regulations.** – When issuing rules and regulations or any  
21 amendments to rules and regulations or when adopting by-laws or amendments to by-laws each  
22 quasi-public corporation shall be subject to the provisions of chapter 42-35 ("The Administrative  
23 Procedures Act").

24 **42-155-14. Severability.** – If any provision of this chapter or of any rule or regulation  
25 made under this chapter, or its application to any person or circumstance is held invalid by a court  
26 of competent jurisdiction, the remainder of the chapter, rule, or regulation and the application of  
27 the provision to other persons or circumstances shall not be affected by this invalidity. The  
28 invalidity of any section or sections or parts of any section or sections shall not affect the validity  
29 of the remainder of the chapter.

30 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 STATE AFFAIRS AND GOVERNMENT -- STATE PURCHASES

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1           This act would impose standards of accountability and transparency on quasi-public  
2 corporations.

3           This act would take effect upon passage.

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