

2013 -- S 0718 SUBSTITUTE A AS AMENDED

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LC02041/SUB A
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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 - ECONOMIC DEVELOPMENT
CORPORATION

Introduced By: Senators Sheehan, Walaska, Felag, Goodwin, and Jabour

Date Introduced: March 13, 2013

Referred To: Senate Commerce

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 42-64-1.1 of the General Laws in Chapter 42-64 entitled "Rhode
2 Island Economic Development Corporation" is hereby amended to read as follows:

3 **42-64-1.1. Change of name.** -- (a) Whenever in any general or public law, reference is
4 made to the "department of economic development" or the "Rhode Island port authority and
5 economic development corporation", or the "Rhode Island economic development corporation",
6 the reference shall be deemed to refer to and mean the "~~Rhode Island economic development~~
7 ~~corporation~~" "Rhode Island commerce corporation", which may also be referred to as the
8 "~~economic development~~ commerce corporation".

9 (b) Whenever in any general or public law, reference is made to the "director of the
10 department of economic development" or the "executive director of the Rhode Island port
11 authority and economic development corporation" or "the executive director of the economic
12 development corporation", the reference shall be deemed to refer to and mean the "executive
13 director of the Rhode Island ~~economic development~~ commerce corporation".

14 (c) Whenever in any general or public law, reference is made to the "economic
15 development council" or "the board of directors of the Rhode Island economic development
16 corporation", the reference shall be deemed to refer to and mean the "board of directors of the
17 Rhode Island ~~economic development~~ commerce corporation".

18 (d) Nothing in this act shall be construed to change or modify any contracts or

1 [agreements of any kind by, for, between, or to which the economic development corporation is a](#)
2 [party. All said contracts and agreements of whatsoever kind are hereby assigned, transferred to](#)
3 [and assumed by the Rhode Island commerce corporation.](#)

4 SECTION 2. Sections 42-64-8, 42-64-9.9, and 42-64-31 of the General Laws in Chapter
5 42-64 entitled "Rhode Island Economic Development Corporation" are hereby amended to read
6 as follows

7 **42-64-8. Directors, officers, and employees.** -- (a) The powers of the Rhode Island
8 economic development corporation shall be vested in a board of directors consisting of ~~thirteen~~
9 ~~(13)~~ [fourteen \(14\)](#) members.

10 (1) The governor shall serve as a member of the board and as chairperson, ex-officio,
11 who shall vote only in the event of a tie.

12 [\(2\) The chairperson of the governor's workforce development board, or his or her](#)
13 [designee, shall serve as a member of the board.](#)

14 ~~(2)~~[\(3\)](#) In addition to the governor [and the chairperson of the governor's workforce](#)
15 [development board, or his or her designee,](#) the membership of the board shall consist of twelve
16 (12) public members to be appointed by the governor.

17 ~~(3)~~[\(4\)](#) Each gubernatorial appointee shall be subject to the advice and consent of the
18 senate and no one shall be eligible for appointment unless he or she is a resident of this state. The
19 membership of the board shall reflect the geographic diversity of the state. Four (4) of the public
20 members shall be owners or principals of small businesses doing business in this state which are
21 independently owned and operated and which employs one hundred (100) or fewer persons. [One](#)
22 [other of the public members shall be a representative of a minority-owned company.](#) One other of
23 the public members shall be a representative of organized labor. One other of the public members
24 shall be a representative of higher education. One other of the public members shall be appointed
25 on an interim basis by the governor when a project plan of the corporation situated on federal
26 land is disapproved by the governing body of a municipality in accordance with section 42-64-
27 13(a)(4). The member shall be the mayor of the municipality within whose borders all or a
28 majority of the project plan is to be carried out, or in a municipality, which has no mayor, the
29 member shall be the president of the town or city council. The appointed interim member shall
30 have all the powers of other members of the board only in its deliberations and action on the
31 disapproval of the project plan situated on federal land and within the borders of his or her
32 municipality. Upon final action by the board pursuant to section 42-64-13(a)(5), the interim
33 member's term of appointment shall automatically terminate.

34 ~~(4)~~[\(5\)](#) It shall be the responsibility of the corporation to conduct a training course for

1 newly appointed and qualified members and new designees of ex-officio members within six (6)
2 months of their qualification or designation. The course shall be developed by the executive
3 director of the corporation or his or her designee, be approved by the board, and conducted by the
4 executive director or his or her designee. The board may approve the use of any board or staff
5 members or other individuals to assist with training. The training course shall include instruction
6 in the following areas: the provisions of the entirety of chapter 64 of this title and of chapters 46
7 of this title, 14 of title 36, and 2 of title 38 of the Rhode Island general laws; and the board's rules
8 and regulations. The director of the department of administration shall, within ninety (90) days of
9 July 15, 2005, prepare and disseminate materials relating to the provisions of chapters 46 of this
10 title, 14 of title 36, and 2 of title 38.

11 ~~(5)~~(6) ~~Public Members~~ members of the board shall be removable by the governor,
12 pursuant to the provisions of section 36-1-7 and for cause only, and removal solely for partisan or
13 personal reasons unrelated to capacity or fitness for the office shall be unlawful.

14 ~~(6)~~(7) The five (5) current members of the board of directors who were duly appointed
15 and who have unexpired terms shall continue as directors of the corporation until February 1,
16 2010, and thereafter until their successors are appointed and qualified. Upon passage of this act,
17 the governor shall appoint seven (7) members to the board, with terms expiring as follows: three
18 (3) members shall have terms expiring on February 1, 2011; three (3) members shall have terms
19 expiring on February 1, 2012; and one member shall have a term expiring on February 1, 2013. In
20 January 2010, the governor shall appoint five (5) members to the board with terms expiring as
21 follows: two (2) members shall have terms expiring on February 1, 2013 and three (3) members
22 shall have terms expiring on February 1, 2014. Beginning in 2011 and annually thereafter, during
23 the month of January, the governor shall appoint a member or members to succeed the member or
24 members whose terms will then next expire to serve for a term of four (4) years commencing on
25 the first day of February and then next following, and thereafter until the successors are appointed
26 and qualified. Beginning in 2011 and annually thereafter the governor shall appoint owners or
27 principals of small businesses doing business in this state which are independently owned and
28 operated, and which employs one hundred (100) or fewer persons. The members of the board
29 shall be eligible to succeed themselves, but only upon reappointment and with senate advice and
30 consent.

31 ~~(7)~~(8) In the event of a vacancy occurring in the office of a member by death, resignation
32 or otherwise, that vacancy shall be filled in the same manner as an original appointment, but only
33 for the remainder of the term of the former member.

34 (b) The directors shall receive no compensation for the performance of their duties under

1 this chapter, but each director shall be reimbursed for his or her reasonable expenses incurred in
2 carrying out those duties. A director may engage in private employment, or in a profession or
3 business.

4 (c) The chairperson shall designate a vice chairperson from among the members of the
5 board who shall serve at the pleasure of the chairperson. A majority of directors holding office
6 shall constitute a quorum, and, except as otherwise provided in section 42-64-13, any action to be
7 taken by the corporation under the provisions of this chapter may be authorized by resolution
8 approved by a majority of the directors present and entitled to vote at any regular or special
9 meeting at which a quorum is present. A vacancy in the membership of the board of directors
10 shall not impair the right of a quorum to exercise all of the rights and perform all of the duties of
11 the corporation.

12 (d) The chief executive officer of the corporation shall be executive director of the
13 corporation, appointed by the governor with the advice and consent of the senate. The executive
14 director shall hold office for the term of three (3) years from the time of his or her appointment
15 and until his or her successor is duly appointed and qualified. The director shall be eligible for
16 reappointment, and shall not engage in any other occupation. The executive director of the
17 corporation shall be entitled to receive for his or her services any reasonable compensation as the
18 board of directors may determine.

19 (e) The board of directors shall appoint a secretary and such additional officers and staff
20 members as they shall deem appropriate and shall determine the amount of reasonable
21 compensation, if any, each shall receive. The board of directors may vest in the executive
22 director, or the director's subordinates, the authority to appoint additional staff members and to
23 determine the amount of compensation each individual shall receive.

24 (f) No full-time employee shall during the period of his or her employment by the
25 corporation engage in any other private employment, profession or business, except with the
26 approval of the board of directors [during an open meeting](#).

27 (g) Notwithstanding any other law to the contrary, it shall not be or constitute a conflict
28 of interest for a director, officer, or employee of any financial institution, investment banking
29 firm, brokerage firm, commercial bank, trust company, building-loan association, architecture
30 firm, insurance company, or any other firm, person, or corporation to serve as a director of the
31 corporation, nor shall any contract or transaction between the corporation and a financial
32 institution, investment banking firm, brokerage firm, commercial bank, trust company, building-
33 loan association, architecture firm, insurance company, or other firm, person, or corporation be
34 void or voidable by reason of that service as director of the corporation. If any director, officer, or

1 employee of the corporation shall be interested either directly or indirectly, or shall be a director,
2 officer, or employee of or have an ownership interest (other than as the owner of less than one
3 percent (1%) of the shares of a publicly-held corporation) in any firm or corporation interested
4 directly or indirectly in any contract with the corporation, that interest shall be disclosed to the
5 corporation and set forth in the minutes of the corporation, and the director, officer, or employee
6 having that ownership interest shall not participate on behalf of the corporation in the
7 authorization of that contract. Interested directors may be counted in determining the presence of
8 a quorum at a meeting of the board of directors of the corporation, which authorizes the contract
9 or transaction.

10 (h) Any action taken by the corporation under the provisions of this chapter may be
11 authorized by vote at any regular or special meeting, and each vote shall take effect immediately.
12 ~~All meetings shall be open to the public and all records shall be a matter of public record except~~
13 ~~that if a majority of the board of directors decides that it would be in the best interests of the~~
14 ~~corporation and the state to hold an executive session in private, then the board of directors is~~
15 ~~authorized to transact any business it deems necessary at that executive session in private, and the~~
16 ~~record of the executive session shall not become a matter of public record until the transaction~~
17 ~~discussed has in the opinion of the board of directors been completed.~~ The corporation shall be
18 subject to the provisions of chapter 42-46 ("Open Meetings") and chapter 38-2 ("Access to Public
19 Records").

20 (i) The board of directors may designate from among its members an executive
21 committee and one or more other committees each of which, to the extent authorized by the board
22 of directors, shall have and may exercise all of the authority of the board of directors, but no
23 executive committee shall have the authority of the board of directors in reference to the
24 disposition of all or substantially all of the property and assets of the corporation, amending the
25 by-laws of the corporation, exercising the condemnation power conferred upon the corporation by
26 section 42-64-9 or taking actions described or referred to in section 42-64-13(a).

27 ~~(j) Any action required by this chapter to be taken at a meeting of the board of directors,~~
28 ~~or any action which may be taken at a meeting of the board of directors, or committee of the~~
29 ~~board of directors, may be taken without a meeting if a consent in writing, setting forth the action~~
30 ~~to be taken, shall be signed before or after that action by all of the directors, or all of the members~~
31 ~~of the committee, as the case may be.~~

32 ~~(k)~~ (j) Employees of the corporation shall not, by reason of their employment, be deemed
33 to be employees of the state for any purpose, any other provision of the general laws to the
34 contrary notwithstanding, including, without limiting the generality of the foregoing, chapters 29,

1 39, and 42 of title 28 and chapters 4, 8, 9, and 10 of title 36.

2 **42-64-9.9. Public access to information.** -- Any permit, permit application or effluent
3 data shall be available to the public for inspection and copying. ~~The Rhode Island economic~~
4 ~~development corporation shall treat as privileged any information, which would, if made public,~~
5 ~~divulge methods or processes entitled to protections as trade secrets of the person or entity. in~~
6 ~~accordance with chapter 38-2 ("Access to Public Records").~~ Confidential or privileged materials
7 may be disclosed or transmitted to other officers, employees or agents of the corporation.

8 **42-64-31. Other statutes.** -- Nothing contained in this chapter shall restrict or limit the
9 powers of the Rhode Island economic development corporation arising under any laws of this
10 state except where those powers are expressly contrary to the provisions of this chapter; provided,
11 however, that the corporation shall not have any power to create, empower or otherwise establish
12 any corporation, subsidiary corporation, corporate body, any form of partnership, or any other
13 separate entity, without the express approval and authorization of the general assembly. Except as
14 otherwise provided, this chapter shall be construed to provide a complete additional and
15 alternative method for doing the things authorized hereby and shall be regarded as supplemental
16 and in addition to the powers conferred by other laws. The issuance of all bonds, notes, and other
17 obligations of the corporation under the provisions of this chapter need not comply with the
18 requirements of any other statute applicable to the issuance of bonds, notes and obligations, ~~and~~
19 ~~contracts for the construction and acquisition of any project undertaken pursuant to this chapter~~
20 ~~need not comply with any provision of any other state law applicable to contracts for the~~
21 ~~construction and acquisition of state owned property, except that the provisions of section 37-13-~~
22 ~~1 et seq. (prevailing wage); section 37-16-2 et seq. (public works arbitration); and section 37-12-1~~
23 ~~et seq. (contractors' bonds) for the construction and acquisition of state or municipally owned~~
24 ~~property shall be applicable.~~ No proceedings or notice of approval shall be required for the
25 issuance of any bonds, notes, and other obligations or any instrument of security except as
26 provided in this chapter.

27 SECTION 3. Chapter 42-64 of the General Laws entitled "Rhode Island Economic
28 Development Corporation" is hereby amended by adding thereto the following sections:

29 **42-64-8.2. Role and responsibilities of board members.** – (a) Board members of the
30 corporation shall:

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

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

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

4 (4) Adopt a mission statement expressing the purpose and goals of the corporation, a
5 description of the stakeholders of the corporation and their reasonable expectations from the
6 corporation, and a list of measurements by which performance of the corporation and the
7 achievement of its goals may be evaluated. The corporation shall at least once every three (3)
8 years publish a self-evaluation based on the stated measurements;

9 (5) Adopt and periodically update an indemnification policy which shall be set forth in
10 the bylaws of the corporation;

11 (6) Establish quantifiable performance measurements for all programs of the corporation
12 and its subsidiaries that will assist the board in evaluating program effectiveness and inform
13 policymaking and resource allocation decisions;

14 (7) Establish an access to capital advisory committee and appoint at least seven (7) public
15 members representing diverse interests; and

16 (8) Perform each of their duties as board members, including, but not limited to, those
17 imposed by this section, in good faith and with that degree of diligence, care, and skill which an
18 ordinarily prudent person in like position would use under similar circumstances and ultimately
19 apply independent judgment in the best interest of the corporation, its mission, and the public.

20 (b) Board members of the corporation shall establish and maintain written policies and
21 procedures for the following:

22 (1) Internal accounting and administrative controls in accordance with the provisions of
23 chapter 35-20 ("Public Corporation Financial Integrity and Accountability Act of 1995");

24 (2) Travel, including lodging, meals, and incidental expenses, provided that no
25 reimbursement shall exceed the allowable state employee reimbursement amount per day;

26 (3) Charitable and civic donations and/or contributions, provided, however, that all such
27 donations or contributions shall be voted by the full board during an open meeting and the vote
28 shall be recorded in the minutes of the meeting, together with:

29 (i) The citation to the specific state statute authorizing the action;

30 (ii) An explanation of how the donation or contribution relates to the mission of the
31 corporation;

32 (iii) The identity of each board member or employee of the corporation that will receive
33 any benefit from the donation or contribution including, without limitation, tickets to events,
34 meals, and golf;

1 (iv) Any disclosure required by chapter 36-14 ("Code of Ethics"); and
2 (v) Each such donation or contribution shall be clearly identified in the financial
3 statements of the corporation.

4 (4) Credit card use, provided, that pursuant to section 35-20-10, no credit card shall be
5 used for personal use;

6 (5) Employee reimbursement, including requests by management for business expenses,
7 and expenses classified as gifts or entertainment;

8 (6) Personnel, including hiring, dismissing, promoting, and compensating employees of
9 the corporation, and provided that no employee of the corporation shall be compensated for sick,
10 vacation, or other leave time to an extent greater than state employees;

11 (7) Severance pay;

12 (8) Marketing expenses; and

13 (9) Lobbyists' expenses.

14 (c) The written policies and procedures required by this section and any additional
15 written policies and procedures that the board may adopt shall be approved by the board during
16 an open meeting and the vote shall be recorded in the minutes of the meeting.

17 (d) Any board member who fails to attend more than fifty percent (50%) of all meetings
18 held during any calendar year shall be deemed to have resigned, unless the board member
19 requests, in writing, to the chairperson to serve the remaining term of his or her appointment,
20 setting forth the reason or reasons for the absences, and the majority of the board members
21 approve the request in an open meeting.

22 (e) No board member shall serve in a paid or voluntary capacity as an officer, employee,
23 or consultant of the corporation.

24 **42-64-8.3. Executive compensation.** – (a) The corporation shall establish a committee
25 on executive compensation which shall meet independently of management and which shall:

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

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

- 1 [\(3\) Conduct the job performance review of the executive officer at least annually; and](#)
2 [\(4\) Negotiate the employment contract of the executive officer which shall be approved](#)
3 [by the full board during an open meeting.](#)

4 **42-64-8.4. Transparency requirements established.** – [The following shall be public](#)
5 [record, available to the public upon request and posted directly and not via link, on the website of](#)
6 [the corporation:](#)

- 7 [\(1\) Job descriptions of the executive director and management;](#)
8 [\(2\) Employment contracts of the executive director and management;](#)
9 [\(3\) Executive and senior management compensation studies pursuant to section 42-64-](#)
10 [8.3;](#)
11 [\(4\) Monthly financial statements;](#)
12 [\(5\) Capital improvement plans;](#)
13 [\(6\) Operating budgets;](#)
14 [\(7\) Strategic plans;](#)
15 [\(8\) Agendas and minutes of the open meetings of the board of the corporation and the](#)
16 [boards of the corporation's subsidiaries, provided, however, that this posting provision shall not](#)
17 [apply to the Quonset development corporation, the Rhode Island airport corporation, the I-195](#)
18 [redevelopment district and the East Providence waterfront district;](#)
19 [\(9\) Quarterly reporting required by section 42-90-1;](#)
20 [\(10\) All regulations of the corporation;](#)
21 [\(11\) Enabling legislation;](#)
22 [\(12\) Mission statement and board self-evaluation required by subdivision 42-64-](#)
23 [8.2\(a\)\(4\);](#)
24 [\(13\) Board members;](#)
25 [\(14\) Organizational chart;](#)
26 [\(15\) Bylaws of the corporation;](#)
27 [\(16\) All reports and audits required by this chapter; and](#)
28 [\(17\) Within ten \(10\) business days of execution, a copy of each contract for legal,](#)
29 [medical, accounting, engineering, or any other professional, financial, technical, or consultant](#)
30 [services for the corporation, consistent with the provisions of chapter 38-2 \("Access to Public](#)
31 [Records Act"\).](#)

32 **42-64-31.1. Rules and regulations.** – [When issuing rules and regulations or any](#)
33 [amendments to rules and regulations or when adopting bylaws or amendments to bylaws, the](#)
34 [corporation shall be subject to the provisions of chapter 42-35 \("Administrative Procedures"\).](#)

1 **42-64-36. Loan and loan guarantee programs.** – (a) No later than September 1, 2013,
2 the corporation shall adopt regulations that establish financing principles and guidelines,
3 including risk assessment, for all loans and guarantees awarded by the corporation or its
4 subsidiaries, provided, however, that this provision shall not apply to the Quonset development
5 corporation, the Rhode Island airport corporation, the I-195 redevelopment district and the East
6 Providence waterfront district. The corporation shall, prior to the award of a loan or guarantee,
7 document that each loan or guarantee complied with these regulations.

8 (b) On or before January 1 of each year, the corporation shall issue a report on all loans
9 and loan guarantees issued by the corporation. The report shall include at a minimum:

10 (1) With respect to loans, a list of each loan, a description of the borrower, the amount of
11 principal and interest outstanding on the loan as of the date of each report, and a summary of the
12 collateral securing the repayment of the loan.

13 (2) With respect to loan guarantees, a list of each loan guarantee issued, a description of
14 the borrower on behalf of which the guarantee was issued, the lender or lenders that made the
15 loan and the amount of the loan to the borrower, the amount of principal and interest outstanding
16 on the loan as of the date of each report, and a summary of the collateral securing the repayment
17 of the loan for which the guarantee was issued.

18 (3) With respect to loan and loan guarantees, a summary of the economic impacts made
19 by each borrower as a result of the loan or loan guarantee, including, but not limited to, the
20 number, type, and wages of jobs created by the borrower, any impacts on the industry in which
21 the borrower operates, and an estimate of income taxes for the state of Rhode Island generated by
22 the employees of the borrower and the borrower itself.

23 (4) Copies of each report shall be submitted to the chairpersons of the house finance
24 committee and the senate finance committee.

25 **42-64-37. Audit of the corporation.** – (a) Commencing July 1, 2014, and every three (3)
26 years thereafter, the corporation shall be subject to a performance audit conducted in compliance
27 with the generally acceptable governmental auditing standards, by the bureau of audits or a
28 certified public accounting firm qualified in performance audits.

29 (b) If the audit is not directly performed by his or her office, the selection of the auditor
30 and the scope of the audit shall be subject to the approval of the chief of the bureau of audits.

31 (c) The audit shall be conducted in conformance with subsections 35-7-3(b) through (d).

32 (d) The results of the audit shall be made public upon completion, posted on the websites
33 of the bureau of audits and the corporation.

34 (e) The corporation shall be responsible for all costs associated with the audit.

1 SECTION 4. Section 1 of this act shall take effect six (6) months after the date
2 of passage. The remaining sections of 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 - ECONOMIC DEVELOPMENT
CORPORATION

1 This act would change the name of the economic development corporation to the Rhode
2 Island commerce corporation and would also establish transparency and accountability provisions
3 with respect to its operations and governance.

4 Section 1 of this act shall take effect six (6) months after the date of passage. The
5 remaining sections of this act shall take effect upon passage.

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