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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2017

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A N A C T

RELATING TO HIGHWAYS - MUNICIPAL ROAD AND BRIDGE REVOLVING FUND

Introduced By: Representatives Tanzi, Donovan, Fogarty, Carson, and Barros

Date Introduced: March 02, 2017

Referred To: House Finance

(RIIB)

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 24-18-3 and 24-18-7 of the General Laws in Chapter 24-18
2 entitled "Municipal Road and Bridge Revolving Fund" are hereby amended to read as follows:

3 **24-18-3. Definitions.**

4 As used in this chapter, the following terms, unless the context requires a different
5 interpretation, shall have the following meanings:

6 (1) "Agency" means the Rhode Island infrastructure bank as set forth in chapter 46-12.2;

7 (2) "Annual construction plan" means the finalized list of approved projects to commence
8 construction each calendar year;

9 (3) "Approved project" means any project approved by the agency for financial
10 assistance;

11 (4) "Department" means the department of transportation, or, if the department shall be
12 abolished, the board, body, or commission succeeding to the principal functions thereof or upon
13 whom the powers given by chapter 5 of title 37 to the department shall be given by law.

14 (5) "Eligible project" means an infrastructure plan, or portion of an infrastructure plan,
15 that meets the project evaluation criteria;

16 (6) "Financial assistance" means any form of financial assistance other than grants
17 provided by the agency to a city or town in accordance with this chapter for all or any part of the
18 cost of an approved project, including, without limitation, temporary and permanent loans, with
19 or without interest, guarantees, insurance, subsidies for the payment of debt service on loans,

1 lines of credit, and similar forms of financial assistance;

2 (7) "Infrastructure plan" means a project proposed by a city or town that would make
3 capital improvements to roads, bridges and appurtenances thereto consistent with project
4 evaluation criteria;

5 (8) "Market rate" means the rate the city or town would receive in the open market at the
6 time of the original loan agreement as determined by the agency in accordance with its rules and
7 regulations;

8 (9) "Project evaluation criteria" means the criteria used by the department to evaluate
9 infrastructure plans and rank eligible projects and shall include, but not be limited to:

10 (i) The extent to which the project generates economic benefits;

11 (ii) The extent to which the project would be able to proceed at an earlier date;

12 (iii) The likelihood that the project would provide mobility benefits;

13 (iv) The cost effectiveness of the project;

14 (v) The likelihood that the project would increase safety; and

15 (vi) The project's readiness to proceed within the forthcoming calendar year;

16 (10) "Project priority list" means the list of eligible projects ranked in the order in which
17 financial assistance shall be awarded by the agency pursuant to § 24-18-7;

18 (11) "Revolving fund" means the municipal road and bridge revolving fund established
19 under § 24-18-4; and

20 (12) "Subsidy assistance" means credit enhancements and other measures to reduce the
21 borrowing costs for a city or town.

22 **24-18-7. Procedure for project approval.**

23 (a) By September 1, 2013, the department shall promulgate rules and regulations
24 establishing the project evaluation criteria and the process through which a city or town may
25 submit an infrastructure plan. By December 31, 2013, the agency shall promulgate rules and
26 regulations to effectuate the provisions of this chapter which may include, without limitation,
27 forms for financial assistance applications, loan agreements, and other instruments. All rules and
28 regulations promulgated pursuant to this chapter shall be promulgated in accordance with the
29 provisions of chapter 42-35.

30 (b) ~~Beginning with the calendar year 2013 and for each calendar year thereafter, cities~~
31 Cities and towns shall ~~have from September 15th through October 15th to~~ submit ~~an~~
32 infrastructure ~~plan~~ plans to the department in accordance with the department's rules and
33 regulations promulgated pursuant to section (a) of this section. ~~In the event that October 15th is a~~
34 ~~Saturday, Sunday, or a general holiday as enumerated in § 25-1-1, the deadline shall be extended~~

1 ~~through the next day that is not a Saturday, Sunday, or a general holiday as enumerated in § 25-1-~~
2 ~~1.~~

3 (c) ~~By the end of each calendar year, the~~ The department shall evaluate all submitted
4 infrastructure plans and, in accordance with the project evaluation criteria, identify all eligible
5 projects, and after a public hearing, the department shall finalize and provide the agency and
6 statewide planning with a project priority ~~list for the forthcoming calendar year~~ The agency shall
7 not award financial assistance to any project not listed on the project priority list.

8 (d) ~~By the end of each calendar year, the agency shall determine the maximum amount of~~
9 ~~financial assistance available for the forthcoming calendar year, provided that it shall not exceed~~
10 ~~an amount of twenty million dollars (\$20,000,000); and provided further that the~~ The agency shall
11 not obligate more than fifty percent (50%) of available funding in any calendar year to any one
12 city or town unless there are no other eligible projects on the project priority list.

13 (e) Upon issuance of the project priority list, the agency shall award financial assistance
14 to cities and towns for approved projects ~~provided, however, that the agency does not exceed its~~
15 ~~maximum annual amount of financial assistance.~~ The agency may decline to award financial
16 assistance to an approved project which the agency determines will have a substantial adverse
17 effect on the interests of holders of bonds or other indebtedness of the agency or the interests of
18 other participants in the financial assistance program, or for good and sufficient cause affecting
19 the finances of the agency. All financial assistance shall be made pursuant to a loan agreement
20 between the agency and the city or town, acting by and through the officer or officers, board,
21 committee, or other body authorized by law, or otherwise its chief executive officer, according to
22 terms and conditions as determined by the agency, and each loan shall be evidenced and secured
23 by the issue to the agency of city or town obligations in fully marketable form in principal
24 amount, bearing interest at the rate or rates specified in the applicable loan agreement, and shall
25 otherwise bear such terms and conditions as authorized by this chapter and/or the loan agreement.

26 SECTION 2. Section 39-2-1.2 of the General Laws in Chapter 39-2 entitled "Duties of
27 Utilities and Carriers" is hereby amended to read as follows:

28 **39-2-1.2. Utility base rate -- Advertising, demand-side management and renewables.**

29 (a) In addition to costs prohibited in § 39-1-27.4(b), no public utility distributing or
30 providing heat, electricity, or water to or for the public shall include as part of its base rate any
31 expenses for advertising, either direct or indirect, which promotes the use of its product or
32 service, or is designed to promote the public image of the industry. No public utility may furnish
33 support of any kind, direct or indirect, to any subsidiary, group, association, or individual for
34 advertising and include the expense as part of its base rate. Nothing contained in this section shall

1 be deemed as prohibiting the inclusion in the base rate of expenses incurred for advertising,
2 informational or educational in nature, which is designed to promote public safety conservation of
3 the public utility's product or service. The public utilities commission shall promulgate such rules
4 and regulations as are necessary to require public disclosure of all advertising expenses of any
5 kind, direct or indirect, and to otherwise effectuate the provisions of this section.

6 (b) Effective as of January 1, 2008, and for a period of fifteen (15) years thereafter, each
7 electric-distribution company shall include a charge per kilowatt-hour delivered to fund demand-
8 side management programs. The 0.3 mills per kilowatt-hour delivered to fund renewable energy
9 programs shall remain in effect until December 31, 2022. The electric-distribution company shall
10 establish and, after July 1, 2007, maintain, two (2) separate accounts, one for demand-side
11 management programs (the "demand-side account"), which shall be funded by the electric
12 demand-side charge and administered and implemented by the distribution company, subject to
13 the regulatory reviewing authority of the commission, and one for renewable-energy programs,
14 which shall be administered by the Rhode Island commerce corporation pursuant to § 42-64-13.2
15 and shall be held and disbursed by the distribution company as directed by the Rhode Island
16 commerce corporation for the purposes of developing, promoting, and supporting renewable
17 energy programs.

18 During the time periods established in subsection (b), the commission may, in its
19 discretion, after notice and public hearing, increase the sums for demand-side management and
20 renewable resources. In addition, the commission shall, after notice and public hearing, determine
21 the appropriate charge for these programs. The office of energy resources and/or the administrator
22 of the renewable energy programs may seek to secure for the state an equitable and reasonable
23 portion of renewable energy credits or certificates created by private projects funded through
24 those programs. As used in this section, "renewable-energy resources" shall mean: (1) Power
25 generation technologies, as defined in § 39-26-5, "eligible renewable-energy resources",
26 including off-grid and on-grid generating technologies located in Rhode Island, as a priority; (2)
27 Research and development activities in Rhode Island pertaining to eligible renewable-energy
28 resources and to other renewable-energy technologies for electrical generation; or (3) Projects and
29 activities directly related to implementing eligible renewable-energy resources projects in Rhode
30 Island. Technologies for converting solar energy for space heating or generating domestic hot
31 water may also be funded through the renewable-energy programs. Fuel cells may be considered
32 an energy efficiency technology to be included in demand-sided management programs. Special
33 rates for low-income customers in effect as of August 7, 1996, shall be continued, and the costs of
34 all of these discounts shall be included in the distribution rates charged to all other customers.

1 Nothing in this section shall be construed as prohibiting an electric-distribution company from
2 offering any special rates or programs for low-income customers which are not in effect as of
3 August 7, 1996, subject to the approval by the commission.

4 (1) The renewable energy investment programs shall be administered pursuant to rules
5 established by the Rhode Island commerce corporation. Said rules shall provide transparent
6 criteria to rank qualified renewable-energy projects, giving consideration to:

- 7 (i) the feasibility of project completion;
- 8 (ii) the anticipated amount of renewable energy the project will produce;
- 9 (iii) the potential of the project to mitigate energy costs over the life of the project; and
- 10 (iv) the estimated cost per kilo-watt hour (kwh) of the energy produced from the project.

11 (c) [Deleted by P.L. 2012, ch. 241, art. 4, § 14].

12 (d) The executive director of the commerce corporation is authorized and may enter into
13 a contract with a contractor for the cost-effective administration of the renewable-energy
14 programs funded by this section. A competitive bid and contract award for administration of the
15 renewable-energy programs may occur every three (3) years and shall include, as a condition, that
16 after July 1, 2008, the account for the renewable-energy programs shall be maintained and
17 administered by the commerce corporation as provided for in subsection (b).

18 (e) Effective January 1, 2007, and for a period of sixteen (16) years thereafter, each gas-
19 distribution company shall include, with the approval of the commission, a charge per deca therm
20 delivered to fund demand-side management programs (the "gas demand-side charge"), including,
21 but not limited to, programs for cost-effective energy efficiency, energy conservation, combined
22 heat and power systems, and weatherization services for low-income households.

23 (f) Each gas company shall establish a separate account for demand-side management
24 programs (the "gas demand-side account"), which shall be funded by the gas demand-side charge
25 and administered and implemented by the distribution company, subject to the regulatory
26 reviewing authority of the commission. The commission may establish administrative
27 mechanisms and procedures that are similar to those for electric demand-side management
28 programs administered under the jurisdiction of the commission and that are designed to achieve
29 cost-effectiveness and high, life-time savings of efficiency measures supported by the program.

30 (g) The commission may, if reasonable and feasible, except from this demand-side
31 management charge:

- 32 (i) Gas used for distribution generation; and
- 33 (ii) Gas used for the manufacturing processes, where the customer has established a self-
34 directed program to invest in and achieve best-effective energy efficiency in accordance with a

1 plan approved by the commission and subject to periodic review and approval by the
2 commission, which plan shall require annual reporting of the amount invested and the return on
3 investments in terms of gas savings.

4 (h) The commission may provide for the coordinated and/or integrated administration of
5 electric and gas demand-side management programs in order to enhance the effectiveness of the
6 programs. Such coordinated and/or integrated administration may after March 1, 2009, upon the
7 recommendation of the office of energy resources, be through one or more third-party entities
8 designated by the commission pursuant to a competitive selection process.

9 (i) Effective January 1, 2007, the commission shall allocate from demand-side
10 management gas and electric funds authorized pursuant to this section, an amount not to exceed
11 two percent (2%) of such funds on an annual basis for the retention of expert consultants, and
12 reasonable administration costs of the energy efficiency and resources management council
13 associated with planning, management, and evaluation of energy-efficiency programs, renewable-
14 energy programs, system reliability least-cost procurement, and with regulatory proceedings,
15 contested cases, and other actions pertaining to the purposes, powers, and duties of the council,
16 which allocation may by mutual agreement, be used in coordination with the office of energy
17 resources to support such activities.

18 (j) Effective January 1, 2016, the commission shall annually allocate from the
19 administrative funding amount allocated in (i) from the demand-side management program as
20 described in subsection (i) as follows: fifty percent (50%) for the purposes identified in
21 subsection (i) and fifty percent (50%) annually to the office of energy resources for activities
22 associated with planning, management, and evaluation of energy-efficiency programs, renewable-
23 energy programs, system reliability, least-cost procurement, and with regulatory proceedings,
24 contested cases, and other actions pertaining to the purposes, powers, and duties of the office of
25 energy resources.

26 (k) On April 15, of each year, the office and the council shall submit to the governor, the
27 president of the senate, and the speaker of the house of representatives, separate financial and
28 performance reports regarding the demand-side management programs, including the specific
29 level of funds that were contributed by the residential, municipal, and commercial and industrial
30 sectors to the overall programs; the businesses, vendors, and institutions that received funding
31 from demand-side management gas and electric funds used for the purposes in this section; and
32 the businesses, vendors, and institutions that received the administrative funds for the purposes in
33 subsections (i) and (j). These reports shall be posted electronically on the websites of the office of
34 energy resources and the energy efficiency resource management council.

1 (l) On or after August 1, 2015, at the request of the Rhode Island infrastructure bank,
2 each electric-distribution company, except for the Pascoag Utility District and Block Island
3 Power Company, shall remit two percent (2%) of the amount of the 2014 electric demand-side
4 charge collections to the Rhode Island infrastructure bank ~~in accordance with the terms of § 46-~~
5 ~~12.2-14.1.~~

6 (m) On or after August 1, 2015, at the request of the Rhode Island infrastructure bank,
7 each gas-distribution company shall remit two percent (2%) of the amount of the 2014 gas
8 demand-side charge collections to the Rhode Island infrastructure bank ~~in accordance with the~~
9 ~~terms of § 46-12.2-14.1.~~

10 SECTION 3. Sections 39-26.5-2, 39-26.5-4.1, 39-26.5-6 and 39-26.5-11 of the General
11 Laws in Chapter 39-26.5 entitled "Property Assessed Clean Energy Program" are hereby
12 amended to read as follows:

13 **39-26.5-2. Definitions.**

14 As used in this chapter, the following definitions apply:

15 (1) "Commercial property" means a property operated for commercial purposes, or a
16 residential property which contains five (5) or more housing units.

17 (2) "Distributed generation system" means an electrical generation facility located in the
18 electric distribution company's load zone with a nameplate capacity no greater than five
19 megawatts (5 MW), using eligible renewable energy resources as defined by § 39-26-5, including
20 biogas created as a result of anaerobic digestion, but, specifically excluding all other listed
21 eligible biomass fuels, and connected to an electrical power system owned, controlled, or
22 operated by the electric distribution company.

23 (3) "Dwelling" means a residential structure or mobile home which contains one to four
24 (4) family housing units, or individual units of condominiums or cooperatives.

25 (4) "Eligible net-metering system" means a facility generating electricity as defined in §
26 39-26.4-2.

27 (5) "Eligible renewable energy resources" means resources as defined in § 39-26-5.

28 (6) "Energy efficiency projects" means those projects that are eligible under § 39-1-27.7
29 or projects that have been defined as eligible in the PACE rules and regulations.

30 (7) "Institution" means a private entity or quasi-state agency.

31 (8) "Loan loss reserve fund" or "(LRF)" means funds set aside to cover losses in the event
32 of loan defaults.

33 (9) "Municipality" or "towns and cities" means any Rhode Island town or city with
34 powers set forth in title 45 of the general laws.

1 (10) "Net metering" means using electricity as defined in § 39-26.4-2.

2 (11) "PACE assessment" or "assessment" means the special assessment placed on a
3 PACE property owner's property tax [or other municipal assessment](#) bill in accordance with this
4 chapter, to be collected by [or on behalf of](#) the PACE municipality in which that PACE property is
5 located and remitted to [the Rhode Island infrastructure bank or to](#) the lender that has financed that
6 PACE project. The PACE assessment shall be owed by the current owner of the related PACE
7 property as of the time each PACE assessment comes due. In the event of a transfer of ownership,
8 all PACE assessments coming due after the date of the transfer, by foreclosure or otherwise, shall
9 be owed by the transferee.

10 (12) "PACE lien" means the non-accelerating lien placed on a PACE property in
11 accordance with the rules and regulations promulgated by the Rhode Island infrastructure bank
12 pursuant to this chapter, in order to secure the repayment of a PACE assessment made in
13 connection with that PACE property and to secure the repayment of each PACE assessment to be
14 made by that PACE property owner as each assessment comes due.

15 (13) "PACE municipality" means a municipality voluntarily designated by its city or
16 town council as a property-assessed clean energy municipality.

17 (14) "PACE project" or "project" means a distinct installation of an eligible energy
18 efficiency system, renewable energy net-metering system, distributed generation system,
19 alternative fuel infrastructure upgrade, and/or other eligible environmental health and
20 environmental safety upgrades.

21 (15) "PACE property" or "property" means any residential property or commercial
22 property which is the subject of an approved application for a PACE project filed pursuant to this
23 chapter.

24 (16) "Past due balances" means the sum of the due and unpaid assessments on a PACE
25 property as of the time the ownership of that PACE property is transferred. "Past due balances"
26 does not mean the unaccelerated balance of the PACE loan at the time that property is transferred.

27 (17) "Property-assessed clean energy" or "PACE" is a voluntary financing mechanism
28 which allows both residential and commercial property owners to access affordable, long-term
29 financing for energy upgrades, and other eligible environmental health and environmental safety
30 upgrades on their property.

31 (18) "Rhode Island infrastructure bank" means the Rhode Island infrastructure bank
32 ("RIIB"). For the purposes of this chapter, Rhode Island infrastructure bank shall include other
33 related state agencies and/or third party administrators, as may be engaged by the Rhode Island
34 infrastructure bank for the purposes of providing the services envisioned by the rules and

1 regulations promulgated in accordance with § 39-26.5-11.

2 **39-26.5-4.1. Financing agreements -- PACE assessments -- PACE liens.**

3 (a) The Rhode Island infrastructure bank [or a third-party capital provider](#) may enter into a
4 financing agreement with a qualifying PACE property owner. After such agreement is entered
5 into, and upon notice from the Rhode Island infrastructure bank, the PACE municipality shall: (i)
6 place a caveat on the land records indicating that a PACE assessment and lien is anticipated upon
7 completion of the PACE project for such property; or (ii) at the direction of the Rhode Island
8 infrastructure bank, levy the PACE assessment and file a lien on the land records on the estimated
9 costs of the PACE project prior to the completion or upon the completion of said PACE project.

10 (b) PACE assessments levied pursuant to this chapter and the interest, fees and any
11 penalties thereon shall constitute a lien against the qualifying PACE property on which they are
12 made until they are paid. Such lien shall be collected in the same manner as the property taxes of
13 the PACE municipality on real property, including, in the event of default or delinquency, with
14 respect to any penalties, fees and remedies. Each such lien may be recorded and released in the
15 manner provided for property tax liens- [and if the property is commercial property as defined](#)
16 [herein it shall be subject to the consent of existing mortgage holders. The PACE lien shall take](#)
17 [precedence over all other liens or encumbrances except a lien for taxes of the municipality on real](#)
18 [property, or if the subject property is residential property as defined herein the PACE lien shall be](#)
19 [subject to any prior recorded mortgage which lien for taxes or pre-recorded residential mortgage](#)
20 [shall have priority over such PACE assessment lien. To the extent PACE assessments are paid in](#)
21 [installments and any such installment is not paid when due, the PACE assessment lien may be](#)
22 [foreclosed to the extent of any unpaid installment payments and any penalties, interest, and fees](#)
23 [related thereto. In the event such PACE assessment lien is foreclosed, such PACE assessment lien](#)
24 [shall survive the judgment of foreclosure to the extent of any unpaid installment payments of the](#)
25 [PACE assessment secured by such PACE assessment lien that were not the subject of such](#)
26 [judgment.](#)

27 (c) Any PACE municipality may assign to the Rhode Island infrastructure bank any and
28 all liens filed by the PACE municipality, as provided in the written agreement between the
29 participating municipality and the Rhode Island infrastructure bank. The Rhode Island
30 infrastructure bank may sell or assign, for consideration, any and all liens received from the
31 participating municipality. The consideration received by the Rhode Island infrastructure bank
32 shall be negotiated between the Rhode Island infrastructure bank and the assignee. The assignee
33 or assignees of such liens shall have and possess the same powers and rights at law or in equity as
34 the Rhode Island infrastructure bank and the participating municipality and its tax collector would

1 have had if the lien had not been assigned with regard to the precedence and priority of such lien,
2 the accrual of interest and the fees and expenses of collection. The assignee shall have the same
3 rights to enforce such liens as any private party holding a lien on real property, including, but not
4 limited to, foreclosure and a suit on the debt. Costs and reasonable attorneys' fees incurred by the
5 assignee as a result of any foreclosure action or other legal proceeding brought pursuant to this
6 section and directly related to the proceeding shall be taxed in any such proceeding against each
7 person having title to any property subject to the proceedings. Such costs and fees may be
8 collected by the assignee at any time after demand for payment has been made by the assignee.

9 **39-26.5-6. Priority of PACE lien.**

10 (a) A PACE lien on a residential property shall be: subordinate to all liens on the
11 residential property in existence at the time the residential PACE lien is filed; subordinate to a
12 first mortgage on the residential property recorded after such PACE lien is filed; and superior to
13 any other lien on the residential recorded after such PACE lien is filed. This subsection shall not
14 affect the status or priority of any other municipal or statutory lien.

15 (b) At the time of a transfer of property ownership of a residential property, including by
16 foreclosure, the past due balances of any special assessment under this chapter shall be due for
17 payment. In the event of a foreclosure action, the past due balances shall include all payments on
18 a PACE assessment that are due and unpaid as of the date of the foreclosure. Unless otherwise
19 agreed by the PACE lender, all payments on the PACE assessment that become due after the date
20 of transfer by foreclosure or otherwise shall continue to be secured by a PACE lien on the PACE
21 property and shall be the responsibility of the transferee.

22 (c) A PACE lien on a commercial property shall be: senior to all liens on the commercial
23 property in existence at the time the PACE lien is filed, subject to the consent of the ~~senior~~
24 existing mortgage ~~holder~~ holders on the property; senior to all liens filed or recorded after the
25 time the PACE lien is created; but junior to a municipal tax lien.

26 (d) At the time of a transfer of property ownership of a commercial property, including
27 by tax sale, in accordance with §44-9-32, or foreclosure, the past due balances of any PACE
28 assessment under this chapter shall be due for payment. Unless otherwise agreed by the PACE
29 lender, all payments of PACE assessments that become due after the date of transfer by tax sale,
30 in accordance with §44-9-32, or foreclosure, or otherwise shall be secured by a PACE lien on the
31 PACE property and shall be the responsibility of the transferee.

32 **39-26.5-11. Rules and regulations.**

33 (a) The Rhode Island infrastructure bank shall consult with the office of energy resources
34 to promulgate rules and regulations, in accordance with this section, and in accordance with

1 chapter 35 of title 42. Such rules and regulations should ensure that the PACE program does not
2 adversely affect the implementation of any other energy program in whose coordination the
3 Rhode Island infrastructure bank or the office of energy resources is involved. Such rules and
4 regulations shall include, but not be limited to, the following:

5 (1) The necessary application requirements and procedures for any residential property
6 owner or commercial property owner seeking PACE financing;

7 (2) The necessary qualifications and requirements for a proposed PACE project;

8 (3) The underwriting criteria to be applied in determining the eligibility of properties and
9 property owners for PACE projects; and

10 (4) Requirements that all existing lien holders on a property be given notice prior to a
11 PACE assessment and lien being filed in connection with that property and that all commercial
12 property owners seeking a commercial PACE loan receive consent of the ~~primary~~ existing
13 mortgage ~~holder~~ holders on that property prior to being eligible.

14 (b) The Rhode Island infrastructure bank shall be responsible for promulgating
15 agreements, forms and other documents necessary for the efficient administration of the PACE
16 program.

17 SECTION 4. Sections 46-12.2-2 of the General Laws in Chapter 46-12.2 entitled "Rhode
18 Island Infrastructure Bank" is hereby amended to read as follows:

19 **46-12.2-2. Definitions.**

20 As used in this chapter, unless the context clearly indicates otherwise, the following
21 words and phrases shall have the following meanings:

22 (1) "Agency" means the Rhode Island clean water finance agency, and, effective
23 September 1, 2015 and thereafter, shall mean the Rhode Island infrastructure bank;

24 (2) "Approved project" means any project or portion thereof that has been issued a
25 certificate of approval by the department for financial assistance from the agency, and also
26 includes any project approved for financial assistance from the agency in accordance with state
27 law, and, furthermore, shall include water pollution abatement projects funded outside of the
28 water pollution control revolving fund, the Rhode Island water pollution control revolving fund,
29 or the local interest subsidy trust fund, without the requirement of the issuance of a certificate of
30 approval;

31 (3) "Board" means board of directors of the agency;

32 (4) "Bond act" means any general or special law authorizing a local governmental unit to
33 incur indebtedness for all or any part of the cost of projects coming within the scope of a water
34 pollution abatement project, or for other projects related to this chapter, including but not limited

1 to § 45-12-2;

2 (5) "Bonds" means bonds, notes, or other evidence of indebtedness of the agency;

3 (6) "Certificate of approval" means the certificate of approval contemplated by § 46-12.2-
4 8;

5 (7) "Chief executive officer" means the mayor in any city, the president of the town
6 council in any town, and the executive director of any authority or commission, unless some other
7 officer or body is designated to perform the functions of a chief executive officer under any bond
8 act or under the provisions of a local charter or other law;

9 (8) "Clean Water Act" or "act" means the Federal Water Pollution Control Act, act of
10 June 30, 1948, ch. 758, as added Oct. 18, 1972, Pub. L. No. 92-500, 86 Stat. 896, as added Dec.
11 27, 1977, Pub. L. No. 95-217, 91 Stat. 1566 (codified at 33 U.S.C. § 1251 et seq., as amended and
12 as hereafter amended from time to time);

13 (9) "Corporation" means any corporate person, including, but not limited to, ~~bodies~~
14 ~~politic and corporate, public departments, public offices, public agencies, public authorities,~~
15 ~~political subdivisions of the state,~~ corporations, societies, associations, limited liability
16 companies, partnerships and sole proprietorships;

17 (10) "Cost" as applied to any approved project, means any or all costs, whenever
18 incurred, approved by the agency in accordance with section eight of this chapter, of planning,
19 designing, acquiring, constructing, and carrying out and placing the project in operation,
20 including, without limiting the generality of the foregoing, amounts for the following: planning,
21 design, acquisition, construction, expansion, improvement and rehabilitation of facilities;
22 acquisition of real or personal property; demolitions and relocations; labor, materials, machinery
23 and equipment; services of architects, engineers, and environmental and financial experts and
24 other consultants; feasibility studies, plans, specifications, and surveys; interest prior to and
25 during the carrying out of any project and for a reasonable period thereafter; reserves for debt
26 service or other capital or current expenses; costs of issuance of local governmental obligations or
27 non-governmental obligations issued to finance the obligations including, without limitation, fees,
28 charges, and expenses and costs of the agency relating to the loan evidenced thereby, fees of
29 trustees and other depositories, legal and auditing fees, premiums and fees for insurance, letters or
30 lines of credit or other credit facilities securing local governmental obligations or non-
31 governmental obligations and other costs, fees, and charges in connection with the foregoing; and
32 working capital, administrative expenses, legal expenses, and other expenses necessary or
33 incidental to the aforesaid, to the financing of a project and to the issuance therefor of local
34 government obligations under the provisions of this chapter;

1 (11) "Department" means the department of environmental management;

2 (12) "Projected energy efficiency savings" means, at the time a loan agreement is entered
3 into between the agency and a local governmental unit, the savings projected to be derived from
4 the implementation of energy efficient and renewable energy upgrades to public buildings, as
5 determined in accordance with the rules and regulations promulgated by the Rhode Island
6 infrastructure bank pursuant to this chapter;

7 (13) "Financial assistance" means any form of financial assistance provided by the
8 agency to a local governmental unit, person or corporation in accordance with this chapter for all
9 or any part of the cost of an approved project, including, without limitation, grants, temporary and
10 permanent loans, with or without interest, guarantees, insurance, subsidies for the payment of
11 debt service on loans, lines of credit, and similar forms of financial assistance; provided,
12 however, notwithstanding the foregoing, for purposes of capitalization grant awards made
13 available to the agency, pursuant to the American Recovery and Reinvestment Act of 2009 (P.L.
14 111-5), or as otherwise required in connection with other capitalization grant awards made
15 available to the agency, financial assistance shall also include principal forgiveness and negative
16 interest loans;

17 (14) "Fully marketable form" means a local governmental obligation in form satisfactory
18 to the agency duly executed and accompanied by an opinion of counsel of recognized standing in
19 the field of municipal law whose opinions have been and are accepted by purchasers of like
20 obligations to the effect that the obligation is a valid and binding obligation of the local
21 governmental unit issuing the obligation, enforceable in accordance with its terms;

22 (15) "General revenues", when used with reference to a local governmental unit, means
23 revenues, receipts, assessments, and other moneys of the local governmental unit received from
24 or on account of the exercise of its powers and all rights to receive the same, including without
25 limitation:

26 (i) Taxes,

27 (ii) Wastewater system revenues,

28 (iii) Assessments upon or payments received from any other local governmental unit
29 which is a member or service recipient of the local governmental unit, whether by law, contract,
30 or otherwise,

31 (iv) Proceeds of local governmental obligations and loans and grants received by the
32 local governmental unit in accordance with this chapter,

33 (v) Investment earnings,

34 (vi) Reserves for debt service or other capital or current expenses,

1 (vii) Receipts from any tax, excise, or fee heretofore or hereafter imposed by any general
2 or special law all or a part of the receipts of which are payable or distributable to or for the
3 account of the local governmental unit,

4 (viii) Local aid distributions, and

5 (ix) Receipts, distributions, reimbursements, and other assistance received by or for the
6 account of the local governmental unit from the United States or any agency, department, or
7 instrumentality thereof;

8 (16) "Loan" means a loan by the agency to a local governmental unit, or person, or
9 corporation for costs of an approved project, including, without limitation, temporary and
10 permanent loans, and lines of credit;

11 (17) "Loan agreement" means any agreement entered into by the agency with a local
12 governmental unit, person, or corporation pertaining to a loan, other financial assistance, local
13 governmental obligations, or non-governmental obligations, including, without limitation, a loan
14 agreement, trust agreement, security agreement, reimbursement agreement, guarantee agreement,
15 financing lease agreement, appropriate agreement, or similar instrument;

16 (18) "Local aid distributions" means receipts, distributions, reimbursements, and other
17 assistance payable by the state to or for the account of a local governmental unit, except such
18 receipts, distributions, reimbursements, and other assistance restricted by law to specific
19 statutorily defined purposes;

20 (19) "Local governmental obligations" means bonds, notes, financing lease obligations,
21 appropriation obligations, and other evidences of indebtedness in fully marketable form issued by
22 a local governmental unit to evidence a loan or other financial assistance, from the agency in
23 accordance with this chapter or otherwise as provided herein;

24 (20) "Local governmental unit" means any town, city, district, commission, agency,
25 authority, board, [bodies politic and corporate, public corporation](#), or other political subdivision or
26 instrumentality of the state or of any political subdivision thereof, including the Narragansett Bay
27 commission; and, for purposes of dam safety or dam maintenance projects, any person seeking
28 financial assistance as a joint applicant with any of the above entities;

29 (21) "Local interest subsidy trust fund" means the local interest subsidy trust fund
30 established under § 46-12.2-6;

31 (22) "Non-governmental obligations" means bonds, notes, or other evidences of
32 indebtedness in fully marketable form issued by a person or corporation to evidence a loan, or
33 other financial assistance, from the agency in accordance with this chapter or otherwise as
34 provided herein.

1 (23) "Person" means any natural person;

2 (24) "Priority determination system" means the system by which water pollution
3 abatement projects are rated on the basis of environmental benefit and other criteria for funding
4 assistance pursuant to rules and regulations promulgated by the department as they may be
5 amended from time to time;

6 (25) "Qualified energy conservation bond" or "QECCB" means those bonds designated by
7 26 U.S.C. § 54D.

8 (26) "Revenues", when used with reference to the agency, means any receipts, fees,
9 payments, moneys, revenues, or other payments received or to be received by the agency in the
10 exercise of its corporate powers under this chapter, including, without limitation, loan
11 repayments, payments on local governmental obligations, non-governmental obligations, grants,
12 aid, appropriations, and other assistance from the state, the United States, or any agency,
13 department, or instrumentality of either or of a political subdivision thereof, bond proceeds,
14 investment earnings, insurance proceeds, amounts in reserves, and other funds and accounts
15 established by or pursuant to this chapter or in connection with the issuance of bonds, including,
16 without limitation, the water pollution control revolving fund, the Rhode Island water pollution
17 control revolving fund, and the local interest subsidy fund, and any other fees, charges or other
18 income received or receivable by the agency;

19 (27) "Rhode Island water pollution control revolving fund" means the Rhode Island water
20 pollution control revolving fund established pursuant to § 46-12.2-6;

21 (28) "Trust agreement" means a trust agreement, loan agreement, security agreement,
22 reimbursement agreement, currency or interest rate exchange agreement, or other security
23 instrument, and a resolution, loan order, or other vote authorizing, securing, or otherwise
24 providing for the issue of bonds, loans, or local governmental obligations or non-governmental
25 obligations;

26 (29) "Wastewater system revenues" means all rates, rents, fee assessments, charges, and
27 other receipts derived or to be derived by a local governmental unit from wastewater collection
28 and treatment facilities and water pollution abatement projects under its ownership or control, or
29 from the services provided thereby, including, without limitation, proceeds of grants, gifts,
30 appropriations, and loans, including the proceeds of loans or grants awarded by the agency or the
31 department in accordance with this chapter, investment earnings, reserves for capital and current
32 expenses, proceeds of insurance or condemnation, and the sale or other disposition of property;
33 wastewater system revenues may also include rates, rents, fees, charges, and other receipts
34 derived by the local governmental unit from any water supply of distribution facilities or other

1 revenue producing facilities under its ownership or control; wastewater system revenues shall not
2 include any ad valorem taxes levied directly by the local governmental unit on any real and
3 personal property;

4 (30) "Water pollution abatement project" or "project" means any project eligible pursuant
5 to Title VI of the Clean Water Act including, but not limited to, wastewater treatment or
6 conveyance project that contributes to removal, curtailment, or mitigation of pollution of the
7 surface water of the state, and conforms with any applicable comprehensive land use plan which
8 has been adopted or any dam safety, removal or maintenance project; it also means a project to
9 enhance the waters of the state, which the agency has been authorized by statute to participate in;
10 it also means any other project to which the agency has been authorized to provide financial
11 assistance;

12 (31) "Water pollution control revolving fund" means the water pollution control
13 revolving fund contemplated by title VI of the Water Quality Act and established under § 46-
14 12.2-6;

15 (32) "Water Quality Act" means the Water Quality Act of 1987, Pub. L. No. 100-4, 101
16 Stat. 7, 33 U.S.C. § 1251 et seq., as amended from time to time.

17 SECTION 5. Sections 46-15.3-4 and 46-15.3-11 of the General Laws in Chapter 46-15.3
18 entitled "Public Drinking Water Supply System Protection" are hereby amended to read as
19 follows:

20 **46-15.3-4. Definitions.**

21 As used in this chapter, the following words and phrases shall have the following
22 meanings, unless the context shall indicate another or different meaning or intent:

23 (1) "Aquifer" means a geologic formation, group of formations, or part of a formation
24 capable of yielding a significant amount of groundwater to wells, springs, or surface water.

25 (2) "Commercial agricultural producers" means purveyors of at least two thousand five
26 hundred dollars (\$2,500) of agricultural products during a calendar year.

27 (3) "Eligible expenditure" means, but is not limited to, the acquisition of a fee simple
28 interest or of a conservation restriction, as that term is defined in § 34-39-2(a), or other interest in
29 watershed lands, including, but not limited to, costs and expenses relating to the improvement of
30 the lands or interests therein, maintenance of the lands or roads or interests therein, and taxes
31 thereon, or the funding of the construction of physical improvements that directly protect the
32 quality and safety of public drinking water supply systems. No funds under this section shall be
33 used to extend service lines or expand system capacity.

34 (4) "Ground water" means water found underground which completely fills the open

1 spaces between particles of sand, gravel, clay, silt, and consolidated rock fractures. The zone of
2 materials filled with groundwater is called the zone of saturation.

3 (5) "Ground water recharge" means the processes of addition of water to the zone of
4 saturation, that zone beneath the water table.

5 (6) "Raw water" means water in its natural state prior to any treatment.

6 (7) "Recharge area" means an area in which water is absorbed that eventually reaches the
7 zone of saturation.

8 (8) "Sale" means all retail sales of potable water to end users for any purpose in the
9 ordinary course of business by a supplier, except for sales exempt pursuant to § 46-15.3-5(c), (d)
10 and (e).

11 (9) "Source" means the raw water upon which a public water supply system abounds, and
12 refers to both groundwater and surface water.

13 (10) "Supplier(s) of public drinking water" and "supplier(s)" mean any city, town,
14 district, or other municipal, quasi municipal, or public or private corporation or company engaged
15 in the sale of potable water and the water supply business in Rhode Island; provided, however,
16 that suppliers which purchase water from the city of Providence shall not be entitled to
17 disbursements pursuant to §46-15.3-11. ~~that only suppliers which withdraw water from wells,~~
18 ~~reservoirs, springs, or other original sources in potable quality shall be entitled to disbursements~~
19 ~~pursuant to § 46-15.3-11.~~

20 (11) "The fund" means the water quality protection funds as described in § 46-15.3-10.

21 (12) "Watersheds" means those land areas which, because of their topography, soil type,
22 and drainage patterns, act as collectors of raw waters which replenish or regorge existing or
23 planned public drinking water supplies.

24 (13) "Non-billed water" means the difference between water produced by a supplier and
25 water sold by the same supplier.

26 (14) "Leakage" means the difference between non-billed water and the total of the
27 estimated or measured allowances for fire fighting, meter inaccuracy, theft, system usage, main
28 flushing, sewer cleaning, storm drain cleaning, and other allowances that may be developed by
29 the water resources board.

30 **46-15.3-11. Disbursements from the funds.**

31 (a) ~~Only suppliers which withdraw water from wells, reservoirs, springs, or other original~~
32 ~~sources of potable water shall be entitled to disbursements from the first of the two (2) mentioned~~
33 ~~funds created under § 46-15.3-10 administered by the water resources board.~~ From amounts
34 available from bond proceeds or otherwise collected and held by the water resources board

1 [pursuant to this chapter](#), that board shall disburse to each supplier contributing to the fund, [other](#)
2 [than those suppliers which purchase water from the city of Providence](#), a proportional amount
3 based upon each supplier's pro rata [contribution to the first of the two mentioned funds created](#)
4 [under §46-15.3-10](#) ~~withdrawal of water by volume from wells, reservoirs, springs, or other~~
5 ~~original sources of water~~ averaged over the three (3) calendar years preceding disbursement as
6 determined by the water resources board. Suppliers shall be required to expend this money [for](#)
7 [any eligible expenditure as defined in §46-15.3-4 including, but not limited to, as follows:](#)

8 ~~(1) Not less than fifty five percent (55%) shall be spent~~ for acquisition of land or rights in
9 land or physical improvements to acquired land required to protect the quality of raw water of the
10 water supply system. Expenditures for maintenance, administration, and payment of taxes on land
11 acquired under this chapter shall be included within this subdivision.

12 ~~(2) Any remaining funds may be used for any eligible expenditures as defined in § 46-~~
13 ~~15.3-4.~~

14 (b) The city of Providence shall make expenditures from amounts available in the fund
15 held by the city of Providence based on the same ~~formula as in subdivisions (a)(1) and (a)(2)~~
16 [requirements set forth in subsection \(a\)](#) above; provided, however, the city of Providence shall be
17 exempt from participating in the use of an alternate deicing mixture within the Scituate watershed
18 unless drinking water supply sodium levels exceed fifteen (15) ppm (parts per million) for three
19 (3) consecutive years or seventeen (17) ppm (parts per million) for one year. The city of
20 Providence will monitor sodium levels and report sodium testing results to the Rhode Island
21 department of health and the public on a yearly basis. If drinking water supply sodium levels
22 exceed fifteen (15) ppm for three (3) consecutive years or seventeen (17) ppm for one year, the
23 city of Providence shall immediately participate in the use of an alternative deicing mixture
24 within the Scituate watershed. In December of 2008, the city of Providence will provide a three
25 (3) year report to the Rhode Island department of environmental management, the general
26 assembly and the public. Every three (3) years, the city of Providence will submit a report to the
27 general assembly on monitoring data for sodium levels within the Scituate watershed. This report
28 will include monitoring data from the previous three (3) year period.

29 (c) In making decisions about the expenditure of money under the provisions of this
30 chapter, suppliers shall take into account the following factors:

- 31 (1) The likelihood of development of the specific parcel proposed for acquisition;
32 (2) The existing land uses, as well as the likelihood of development, in the watershed;
33 (3) The potential threat to public drinking water sources posed by development in the
34 watershed including, but not limited to, the intensity of development, the types of land uses,

1 proximity to reservoirs and/or well heads, and the buffering and filtration capacity of the natural
2 systems;

3 (4) Whether alternative protection measures are available and/or have been attempted,
4 including local land use regulations;

5 (5) The number of persons who presently depend on the sources for their drinking water,
6 as well as the number of persons who may depend on it in the future;

7 (6) The anticipated cost of the parcel proposed to be purchased, and whether less than a
8 fee interest may be acquired which would reduce the cost significantly while still providing
9 protection to the source;

10 (7) Other cost effectiveness considerations, including whether protection of the source
11 can be provided by the construction of physical improvements;

12 (8) Whether acquisition of the specific parcel, and the protection of the watershed of
13 which it is a part, is consistent with other planning considerations;

14 (9) Proposed management techniques for the parcel proposed to be acquired which will
15 maximize its capacity to protect the source.

16 (d) The costs of issuance of notes and bonds authorized by § 46-15.3-10 may be payable
17 from any monies in the water quality protection funds.

18 SECTION 6. Section 46-12.2-14.1 of the General Laws in Chapter 46-12.2 entitled
19 "Rhode Island Infrastructure Bank" is hereby repealed.

20 ~~46-12.2-14.1. Electric and gas demand side charge proceeds as further security for~~
21 ~~debt funding energy efficiency improvements in public buildings.~~

22 ~~(a) Upon receipt of the electric and gas demand side charge proceeds identified in §§ 39-~~
23 ~~2-1.2(1) and 39-2-1.2(m), the Rhode Island infrastructure bank shall deposit the electric and gas~~
24 ~~demand side charge proceeds in a loan loss reserve fund to provide security for any loans made~~
25 ~~by the Rhode Island infrastructure bank or any bonds of the Rhode Island infrastructure bank~~
26 ~~issued to fund energy efficiency improvements in public buildings pursuant to § 46-12.2-4.2. The~~
27 ~~funds in the loan loss reserve fund described therein shall only be used after all other available~~
28 ~~loan loss reserve funds have been applied.~~

29 ~~(b) After all loans and bonds in connection with the efficient buildings fund have been~~
30 ~~repaid in full, the balance of the loan loss reserve fund, including any accrued interest, shall be~~
31 ~~remitted to the electric and gas utilities described in § 39-2-1.2, to be used for energy efficiency~~
32 ~~programmatic purposes.~~

1 SECTION 7. This act shall take effect upon passage.

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LC001743/SUB A/2
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO HIGHWAYS - MUNICIPAL ROAD AND BRIDGE REVOLVING FUND

1 This act would amend several sections relative to the eligibility and award process for
2 projects that receive financial assistance from PACE (Property Assessment Clean Energy)
3 programs and the Rhode Island infrastructure bank.

4 This act would take effect upon passage.

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LC001743/SUB A/2
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