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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2008

A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT

Introduced By: Senators Algieri, and Gibbs

Date Introduced: February 26, 2008

Referred To: Senate Corporations

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 23-82-3, 23-82-5 and 23-82-6 of the General Laws in Chapter 23-
2 82 entitled "Implementation of the Regional Greenhouse Gas Initiative Act" are hereby amended
3 to read as follows:

4 **23-82-3. Definitions.** -- As used in this chapter:

5 (1) "Allowance" means an authorization to emit a fixed amount of carbon dioxide;

6 (2) "Department" means department of environmental management;

7 (3) "Regional greenhouse gas initiative" or "RGGI" means the memorandum of
8 understanding (MOU) dated December 20, 2005, as may be amended, and corresponding model
9 rule, as may be amended, that establishes an electric power sector carbon emissions cap and trade
10 program.

11 (4) "Office" means the office of energy resources; and

12 (5) "Council" means the energy efficiency and resources management council.

13 [\(6\) "Authority" means the Rhode Island power authority.](#)

14 **23-82-5. Sale of allowances.** -- (a) The department shall provide in its regulations that
15 one hundred percent (100%) of all allowances issued under the program in the state of Rhode
16 Island shall be sold. A de minimus portion of allowances may be set aside to support the
17 voluntary renewable energy provisions of the regional greenhouse gas initiative model rule.

18 (b) The department's regulations shall specify the mechanism for sale of allowances,
19 including authorizing the state to make use of any voluntary regional organizations, structures or

1 mechanisms available to states implementing a program of this type, provided that any sale of
2 allowances must be public, competitive and open to all who wish to participate.

3 (c) The department may engage an independent contractor, consumer trustee, [the](#)
4 [authority](#) or other entity experienced in sale or auction design and management, including a
5 regional entity engaged by multiple states to conduct regional sales or auctions, who is
6 determined by the department, in consultation with the office, to be qualified to conduct auctions
7 or sales in a manner that assures the efficiency of the auctions or sales. The selection of any
8 independent contractor, consumer trustee or other entity shall be done in accordance with
9 applicable procedures of the division of purchases.

10 (d) The department shall annually convey one hundred percent (100%) of all carbon
11 allowances established pursuant to this section to the selected independent contractor, consumer
12 trustee or other entity who shall be authorized to receive, hold and sell allowances for the long-
13 term benefit of consumers. The selected independent contractor, consumer trustee or other entity
14 shall conduct the auction or sale, collect the auction proceeds and shall, without further
15 appropriation, distribute the proceeds of the auction or sale in accordance with section 23-82-6,
16 under the oversight of the department.

17 (e) The department shall require an annual report from the independent contractor,
18 consumer trustee, [the authority](#) or other entity conducting the auction or sale describing the
19 auction or sale and its results. The report shall be made public and shall also be submitted to the
20 general assembly.

21 **23-82-6. Use of auction or sale proceeds.** -- (a) The proceeds from the auction or sale of
22 the allowances shall be used for the benefit of energy consumers through investment in the most
23 cost-effective available projects that can reduce long-term consumer energy demands and costs.
24 Such proceeds may be used only for the following purposes, in a proportion to be determined
25 annually by the office in consultation with the council and the department:

26 (1) Promotion cost-effective energy efficiency and conservation;

27 (2) Promotion of cost-effective renewable non-carbon emitting energy technologies as
28 defined in Rhode Island general law section 39-26-5;

29 (3) Cost-effective direct rate relief for consumers;

30 (4) Direct rate relief for low-income consumers;

31 (5) Reasonable compensation to an entity selected to administer the auction or sale; and

32 (6) Reasonable costs of the department and office in administering this program, which
33 shall not in any year exceed three hundred thousand dollars (\$300,000) or five percent (5%) of
34 the proceeds from sale or auction of the allowances, whichever is less.

1 (b) Any interest earned on the funds so generated must be credited to the fund. Funds not
2 spent in any fiscal year shall remain in the fund to be used for future energy efficiency and carbon
3 reduction programs.

4 (c) Annually, the ~~office~~ [authority](#), in consultation with the department, [the office](#) and the
5 council, shall prepare a draft proposal on how the proceeds from the allowances shall be
6 allocated. The draft proposal shall be designed to augment and coordinate with existing energy
7 efficiency and renewable energy low-income programs, and shall not propose use of auction
8 proceeds for projects already funded under other programs. The proposal for allocation of
9 proceeds in subsections 23-82-6(1), (2) and (3) shall be one that best achieves the purposes of the
10 law, namely, lowering carbon emissions and minimizing costs to consumers over the long term.
11 The ~~office~~ [authority](#) shall hold a public hearing and accept public comment on the draft proposal
12 in accordance with chapter 42-35 (the "Administrative Procedure Act"). Once the proposal is
13 final, the department shall authorize the disbursement of funds in accordance with the final plan.

14 (d) The ~~office~~ [authority](#) shall prepare, in consultation with the department, [the office](#) and
15 the council, a report by January 1st of each year describing the implementation and operation of
16 RGGI, the revenues collected and the expenditures made under this section, the statewide energy
17 efficiency and carbon reduction programs, and any recommendations for changes to law relating
18 to the state's energy conservation or carbon reduction efforts. The report shall be made public and
19 shall also be submitted to the general assembly.

20 SECTION 2. Section 35-4-27 of the General Laws in Chapter 35-4 entitled "State Funds"
21 is hereby amended to read as follows:

22 **35-4-27. Indirect cost recoveries on restricted receipt accounts.** -- Indirect cost
23 recoveries of ten percent (10%) of cash receipts shall be transferred from all restricted receipt
24 accounts, to be recorded as general revenues in the general fund. However, there shall be no
25 transfer from cash receipts with restrictions received exclusively: (1) from contributions from
26 non-profit charitable organizations; (2) from the assessment of indirect cost recovery rates on
27 federal grant funds; or (3) through transfers from state agencies to the department of
28 administration for the payment of debt service. These indirect cost recoveries shall be applied to
29 all accounts, unless prohibited by federal law or regulation, court order, or court settlement. The
30 following restricted receipt accounts shall not be subject to the provisions of this section:

- 31 Department of Human Services
- 32 Veterans' home -- Restricted account
- 33 Veterans' home -- Resident benefits
- 34 Organ transplant fund

1 Veteran's Cemetery Memorial Fund
2 Department of Health
3 Pandemic medications and equipment account
4 Department of Mental Health, Retardation and Hospitals
5 Hospital Medicare Part D Receipts
6 Department of Environmental Management
7 National heritage revolving fund
8 Environmental response fund II
9 Underground storage tanks
10 Rhode Island Council on the Arts
11 Art for public facilities fund
12 Rhode Island Historical Preservation and Heritage Commission
13 Historic preservation revolving loan fund
14 Historic Preservation loan fund -- Interest revenue
15 State Police
16 Forfeited property -- Retained
17 Forfeitures -- Federal
18 Forfeited property -- Gambling
19 Donation -- Polygraph and Law Enforcement Training
20 Attorney General
21 Forfeiture of property
22 Federal forfeitures
23 Attorney General multi-state account
24 Department of Administration
25 Restore and replacement -- Insurance coverage
26 Convention Center Authority rental payments
27 Investment Receipts -- TANS
28 Car Rental Tax/Surcharge-Warwick Share
29 Legislature
30 Audit of federal assisted programs
31 Department of Elderly Affairs
32 Pharmaceutical Rebates Account
33 Affordable Energy fund
34 Department of Children Youth and Families

- 1 Children's Trust Accounts -- SSI
- 2 Military Staff
- 3 RI Military Family Relief Fund
- 4 Treasury
- 5 Admin. Expenses -- State Retirement System
- 6 Retirement -- Treasury Investment Options
- 7 Business Regulation
- 8 Banking Division Reimbursement Account
- 9 Securities Division Reimbursement Account
- 10 Commercial Licensing and Racing and Athletics Division Reimbursement Account
- 11 Insurance Division Reimbursement Account-
- 12 [Renewable Energy Fund](#)
- 13 [Renewable Energy Development Fund](#)
- 14 [Greenhouse Gas Allowances.](#)

15 SECTION 3. Section 39-2-1.2 of the General Laws in Chapter 39-2 entitled "Duties of
 16 Utilities and Carriers" is hereby amended to read as follows:

17 **39-2-1.2. Utility base rate -- Advertising, demand side management and renewables.**

18 -- (a) In addition to costs prohibited in section 39-1-27.4(b), no public utility distributing or
 19 providing heat, electricity, or water to or for the public shall include as part of its base rate any
 20 expenses for advertising, either direct or indirect, which promotes the use of its product or
 21 service, or is designed to promote the public image of the industry. No public utility may furnish
 22 support of any kind, direct, or indirect, to any subsidiary, group, association, or individual for
 23 advertising and include the expense as part of its base rate. Nothing contained in this section shall
 24 be deemed as prohibiting the inclusion in the base rate of expenses incurred for advertising,
 25 informational or educational in nature, which is designed to promote public safety conservation of
 26 the public utility's product or service. The public utilities commission shall promulgate such rules
 27 and regulations as are necessary to require public disclosure of all advertising expenses of any
 28 kind, direct or indirect, and to otherwise effectuate the provisions of this section.

29 (b) Effective as of January 1, 2003, and for a period of ten (10) years thereafter, each
 30 electric distribution company shall include charges of 2.0 mills per kilowatt-hour delivered to
 31 fund demand side management programs and 0.3 mills per kilowatt-hour delivered to fund
 32 renewable energy programs. Existing charges for these purposes and their method of
 33 administration shall continue through December 31, 2002. Thereafter, the electric distribution
 34 company shall establish and after July 1, 2007, maintain two (2) separate accounts, one for

1 demand side management programs, which shall be administered and implemented by the
2 distribution company, subject to the regulatory reviewing authority of the commission, and one
3 for renewable energy programs, which shall be administered by the office of energy resources
4 through June 30, 2007, and effective July 1, 2007, shall be held and disbursed by ~~the distribution~~
5 ~~company~~ the Rhode Island power authority as directed by the ~~commissioner of the office of~~
6 ~~energy resources~~ executive director of the Rhode Island power authority, with the approval, if
7 appropriate, of the ~~trustees of the renewable energy development fund~~ board of directors of the
8 Rhode Island power authority, for the purposes of developing, promoting and supporting
9 renewable energy programs.

10 During the ten (10) year period the commission may, in its discretion, after notice and
11 public hearing, increase the sums for demand side management and renewable resources;
12 thereafter, the commission shall, after notice and public hearing, determine the appropriate charge
13 for these programs. The office of energy resources and/or the administrator of the renewable
14 energy programs shall seek to secure for the state an equitable and reasonable portion of
15 renewable energy credits or certificates created by projects funded through those programs, and
16 shall develop and execute by July 1, 2007, a plan to make the program self-sustaining as of
17 January 1, 2013. As used in this section, "renewable energy resources" shall mean: (1) power
18 generation technologies as defined in section 39-26-5, "eligible renewable energy resources",
19 including off-grid and on-grid generating technologies located in Rhode Island as a priority; (2)
20 research and development activities in Rhode Island pertaining to eligible renewable energy
21 resources and to other renewable energy technologies for electrical generation; or (3) projects and
22 activities directly related to implementing eligible renewable energy resources projects in Rhode
23 Island. Technologies for converting solar energy for space heating or generating domestic hot
24 water may also be funded through the renewable energy programs, so long as these technologies
25 are installed on housing projects that have been certified by the executive director of the Rhode
26 Island housing and mortgage finance corporation as serving low-income Rhode Island residents.
27 Fuel cells may be considered an energy efficiency technology to be included in demand sided
28 management programs. Special rates for low-income customers in effect as of August 7, 1996
29 shall be continued, and the costs of all of these discounts shall be included in the distribution rates
30 charged to all other customers. Nothing in this section shall be construed as prohibiting an electric
31 distribution company from offering any special rates or programs for low-income customers
32 which are not in effect as of August 7, 1996, subject to the approval by the commission.

33 (c) The ~~commissioner~~ executive director of the ~~office of energy resources~~ Rhode Island
34 power authority is authorized and may enter into a contract with a contractor for the cost effective

1 administration of the renewable energy programs funded by this section. The director shall
2 initiate the competitive bid process by the issuance and advertisement of specifications and
3 request for proposals, on or before September 1, 2002. The contract resulting from the
4 competitive bid process shall be awarded to become effective for a three (3) year period
5 commencing no later than January 1, 2003. A competitive bid and contract award for
6 administration of the renewable energy programs may occur every three (3) years thereafter, and
7 shall include as a condition that after July 1, 2007 the account for the renewable energy programs
8 shall be maintained by the ~~distribution company~~ Rhode Island power authority as provided for in
9 subdivision (b) above and, with the approval of the ~~commissioner~~ executive director of the ~~office~~
10 ~~of energy resources~~ Rhode Island power authority and ~~the trustees of the renewable energy fund,~~
11 its board of directors, may be administered by the ~~economic development corporation.~~ Rhode
12 Island power authority.

13 (d) Effective January 1, 2007, and for a period of seven (7) years thereafter, each gas
14 distribution company shall include, with the approval of the commission, a charge of up to fifteen
15 cents (\$0.15) per deca therm delivered to demand side management programs, including, but not
16 limited to, programs for cost-effective energy efficiency, energy conservation, combined heat and
17 power systems, and weatherization services for low income households.

18 (e) The gas company shall establish a separate account for demand side management
19 programs, which shall be administered and implemented by the distribution company, subject to
20 the regulatory reviewing authority of the commission. The commission may establish
21 administrative mechanisms and procedures that are similar to those for electric demand side
22 management programs administered under the jurisdiction of the commissions and that are
23 designed to achieve cost-effectiveness and high life-time savings of efficiency measures
24 supported by the program.

25 (f) The commission may, if reasonable and feasible, except from this demand side
26 management change:

27 (i) gas used for distribution generation; and

28 (ii) gas used for the manufacturing processes, where the customer has established a self-
29 directed program to invest in and achieve best effective energy efficiency in accordance with a
30 plan approved by the commission and subject to periodic review and approval by the
31 commission, which plan shall require annual reporting of the amount invested and the return on
32 investments in terms of gas savings.

33 (g) The commission may provide for the coordinated and/or integrated administration of
34 electric and gas demand side management programs in order to enhance the effectiveness of the

1 programs. Such coordinated and/or integrated administration may after March 1, 2009, upon the
2 recommendation of the office of energy resources, be through one or more third-party entities
3 designated by the commission pursuant to a competitive selection process.

4 (h) Effective January 1, 2007, the commission shall allocate from demand-side
5 management gas and electric funds authorized pursuant to this section 39-2-1.2, an amount not to
6 exceed two percent (2%) of such funds on an annual basis for the retention of expert consultants,
7 and reasonable administrations costs of the energy efficiency and resources management council
8 associated with planning, management, and evaluation of energy efficiency programs, renewable
9 energy programs and least-cost procurement, and with regulatory proceedings, contested cases,
10 and other actions pertaining to the purposes, powers and duties of the council, which allocation
11 may by mutual agreement, be used in coordination with the office of energy resources to support
12 such activities.

13 SECTION 4. Section 39-26-7 of the General Laws in Chapter 39-26 entitled "Renewable
14 Energy Standard" is hereby amended to read as follows:

15 **39-26-7. Renewable energy development fund.** -- (a) There is hereby authorized and
16 created within the ~~economic development corporation~~ Rhode Island power authority a renewable
17 energy development fund for the purpose of increasing the supply of NE-GIS certificates
18 available for compliance in future years by obligated entities with renewable energy standard
19 requirements, as established in this chapter. The fund shall be located at and administered by the
20 Rhode Island power authority. ~~economic development corporation and shall have a board of~~
21 ~~trustees of five (5) members as follows: the executive director of the economic development~~
22 ~~corporation, who shall be chairperson; the director of the department of administration or a~~
23 ~~designee of the director; the administrator of the division of public utilities; and two (2) public~~
24 ~~members appointed by the governor with advice and consent of the senate, who shall serve terms~~
25 ~~of three (3) years; provided, however, that no public members may serve more than two (2)~~
26 ~~consecutive (3) three year terms. One of the public members shall be a representative of an~~
27 ~~organization that advocates for renewable energy development. Each member shall hold office~~
28 ~~for the term appointed and until the member's successor shall have been duly appointed and~~
29 ~~qualified, or until the member's earlier death, resignation or removal. Members of the board of~~
30 ~~trustees of the fund shall receive no compensation for the performance of their duties, but may be~~
31 ~~reimbursed for reasonable expenses incurred in carrying out those duties.~~ The board of ~~trustees~~
32 energy efficiency and resource management council shall recommend to the ~~economic~~
33 ~~development corporation~~ Rhode Island power authority:

34 (1) Plans and guidelines for the management and use of the fund, and

1 (2) Its evaluation of proposals and/or actions to obligate, use and/or sell, dispose, trade or
2 exchange assets held by the fund. ~~The board of trustees shall have the power to adopt, with the~~
3 ~~approval of the economic development corporation, such by laws as may be necessary or~~
4 ~~convenient for the conduct of its affairs.~~

5 (b) The ~~economic development corporation~~ Rhode Island power authority shall enter into
6 agreements with obligated entities to accept alternative compliance payments, consistent with
7 rules of the commission and the purposes set forth in this section; and alternative compliance
8 payments received pursuant to this section shall be trust funds to be held and applied solely for
9 the purposes set forth in this section.

10 (c) The uses of the fund shall include but not be limited to:

11 (1) Stimulating investment in renewable energy development by entering into
12 agreements, including multi-year agreements, for renewable energy certificates;

13 (2) Issuing assurances and/or guarantees to support the acquisition of renewable energy
14 certificates and/or the development of new renewable energy sources for Rhode Island;

15 (3) Establishing escrows, reserves, and/or acquiring insurance for the obligations of the
16 fund;

17 (4) Paying administrative costs of the fund incurred by the ~~economic development~~
18 ~~corporation~~ Rhode Island power authority or the board of ~~trustees~~ directors, not to exceed ten
19 percent (10%) of the income of the fund, including, but not limited to, alternative compliance
20 payments.

21 (d) NE-GIS certificates acquired through the fund may be conveyed to obligated entities
22 or may be credited against the renewable energy standard for the year of the certificate provided
23 that the commission assesses the cost of the certificates to the obligated entity, or entities,
24 benefiting from the credit against the renewable energy standard, which assessment shall be
25 reduced by previously made alternative compliance payments and shall be paid to the fund.

26 (e) The trustees, in cooperation and concurrence with the commissioner of the office of
27 energy resources, consistent with rules as may be adopted by the commission, develop an
28 integrated plan and strategy, by July 1, 2007, for stimulating the development of and financing
29 eligible renewable energy resources.

30 SECTION 5. Title 42 of the General Laws entitled "STATE AFFAIRS AND
31 GOVERNMENT" is hereby amended by adding thereto the following chapter:

32 CHAPTER 149

33 THE RHODE ISLAND POWER AUTHORITY ACT

34 42-149-1. Short title. -- This chapter shall be known as "The Rhode Island Power

1 Authority Act."

2 **42-149-2. Definitions.** -- As used in this chapter, the following words and terms shall
3 have the following meanings, unless the context indicates another or different meaning or intent:

4 (1) "Authority," or "power authority" means the governmental agency and public
5 instrumentality authorized, created, and established pursuant to section 42-149-3.

6 (2) "Bonds" and "notes" means the bonds, notes, securities, or other obligations or
7 evidences of indebtedness issued by the economic development corporation on behalf of the
8 authority as provided for by this chapter, all of which shall be issued under the name of and
9 known as obligations of the "economic development corporation."

10 (3) "Council" means the energy efficiency and resources management council.

11 (4) "Director" means the executive director of the authority.

12 (5) "Energy facility" means any new or existing real or personal property designed,
13 intended or utilized for generating, manufacturing, producing or storing electrical energy, and any
14 appurtenances, equipment, and machinery or other personal property necessary or desirable for
15 those purposes.

16 (6) "Energy products" means electrical energy, electrical capacity payments, demand
17 response payments, renewable energy certificates, and emissions credits including NOx credits
18 SOx credits and carbon credits.

19 (7) "Local governing body" means any town or city council, commission or other elective
20 governing body now or hereafter vested by state statute, charter, or other law, with jurisdiction to
21 initiate and adopt local ordinances, whether or not these local ordinances require the approval of
22 the elected or appointed chief executive officer or other official or body to become effective.

23 (8) "Municipality" means any city or town within the state now existing or hereafter
24 created.

25 (9) "Office" means the office of energy resources.

26 (10) "Personal property" means all tangible personal property, new or used, including,
27 without limiting the generality of the foregoing, all machinery, equipment, transportation
28 equipment, and all other things and rights usually included within that term. "Personal property"
29 also means and includes any and all interests in the property which are less than full title, such as
30 leasehold interests, security interests, and every other interest or right, legal or equitable.

31 (11) "Project" or "energy project" or "energy project of the authority" means the
32 acquisition, ownership, operation, construction, reconstruction, rehabilitation, improvement,
33 development, sale, lease, or other disposition of, or the provision of financing for, any real or
34 personal property (by whomever owned) or any interests in real or personal property, including,

1 without limiting the generality of the foregoing, any real or personal property designed, intended
2 or utilized for generating, manufacturing or producing electrical energy.

3 (12) "Project cost" means the sum total of all costs incurred by the authority in carrying
4 out all works and undertakings which the authority deems reasonable and necessary for the
5 development of a project, including an allocable portion of the administrative and operating
6 expenses of the authority.

7 (13) "Project user" means the person, company, corporation, partnership, or commercial
8 entity, municipality, state agency or the United States of America who shall be the user of, or
9 beneficiary of, a power project.

10 (14) "Real property" means lands, structures (new or used), franchises, and interests in
11 land, including lands under water, and riparian rights, space rights, and air rights, and all other
12 things and rights usually included within the term.

13 (15) "Revenues" means: (1) with respect to any project, the fees, charges, installment
14 payments, repayments, and other income or profit derived from a project or a combination of
15 projects; and (2) any receipts, fees, payments, moneys, revenues or other payments received or to
16 be received by the authority in the exercise of its corporate powers under this chapter, including,
17 without limitation, loan repayments, grants, aid, appropriations and other assistance for the state,
18 the United States or any corporation, department or instrumentality of either, or of a political
19 subdivision thereof, bond proceeds, investment earnings, insurance proceeds, amounts in reserves
20 and other funds and accounts established by or pursuant to this chapter or in connection with the
21 issuance of bonds, and any other taxes, assessments, fees, charges, awards or other income or
22 amounts received or receivable by the authority.

23 (16) "State" means the state of Rhode Island and Providence Plantations.

24 (17) "State agency" means any office, department, board, commission, bureau, division,
25 authority, or public corporation, agency or instrumentality of the state.

26 (18) "State guide plan" means the plan adopted pursuant to section 42-11-10, which
27 established the statewide planning program.

28 **42-149-3. Creation.** -- (a) There is hereby authorized, created, and established a public
29 corporation of the state having a distinct legal existence from the state and not constituting a
30 department of state government, which is a governmental agency and public instrumentality of
31 the state, to be known as the "Rhode Island power authority," and which may be referred to as the
32 "power authority" or "the authority," with those purposes and powers that are set forth in this
33 chapter. The exercise by the authority of the powers conferred by this chapter shall be deemed
34 and held to be the performance of an essential governmental function of the state for public

1 purposes. It is the intent of the general assembly by the passage of this chapter to vest in the
2 authority all powers, authority, rights, privileges and titles which may be necessary to enable it to
3 accomplish the purposes herein set forth, and this chapter and the powers granted hereby shall be
4 liberally construed in conformity with those purposes.

5 (b) The authority and its corporate existence shall continue until terminated by law or
6 until the authority shall cease entirely and continuously to conduct or be involved in any business
7 whatsoever in furtherance of its purposes; provided, that no termination shall take effect, so long
8 as the authority shall have bonds, notes, or other obligations outstanding, unless adequate
9 provision shall have been made for the payment thereof pursuant to the documents securing the
10 obligations or to the terminating law. Upon termination of the existence of the authority, all of its
11 rights and properties shall pass to and be vested in the state. At no time shall the assets or other
12 property of the authority inure to the benefit of any person or other corporation or entity.

13 **42-149-4. Purposes.** -- The authority is authorized, created, and established as the state's
14 lead agency for integrated management of public funds for renewable energy development, for
15 public investment in renewable energy development, and for other energy products and shall have
16 the following purposes:

17 (a) To promote and encourage the preservation, expansion, and sound development of
18 renewable energy resources, by providing coordinated and cost-effective use of funds, consistent
19 with any renewable energy procurement and/or investment plan adopted by the office that in a
20 manner provides reasonable opportunities for non-public ownership and financing of renewable
21 energy projects, from:

22 (1) Sale of allowances under the greenhouse gas initiative, as set forth in chapter 23-82;

23 (2) The renewable energy program of the demand side management program as set forth
24 in section 39-2-1.2; and

25 (3) The renewable energy development fund of the renewable energy standard, as set
26 forth in chapter 39-26.

27 (b) To be the primary public mechanism for any long-term contracts that are necessary or
28 desirable for the development of cost-effective renewable energy projects and that may be
29 necessary to secure the full benefits of cost-effective renewable energy development for Rhode
30 Island.

31 (c) To undertake such other energy projects, with the approval of the public utilities
32 commission to the extent that the commission has regulatory authority over such projects, as may
33 be requested by the commissioner in consultation with the council. The public utilities
34 commission may grant its approval if the commission finds that a proposed energy project is

1 reasonable, prudent, cost-effective and in the interest of the people of the state.

2 (d) To undertake such other energy projects as may be assigned to the authority by law.

3 **42-149-5. General powers.** -- (a) Except to the extent inconsistent with any specific
4 provision of this chapter, the authority shall have the power:

5 (1) To sue and be sued, complain and defend, in its corporate name.

6 (2) To have a seal which may be altered at pleasure and to use the seal by causing it or a
7 facsimile of the seal, to be impressed or affixed, or in any other manner reproduced.

8 (3) To purchase, receive, lease, or otherwise acquire, own, hold, improve, use, and
9 otherwise deal in and with, real or personal property, or any interest in real or personal property,
10 wherever situated.

11 (4) To sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of
12 all or any part of its property and assets for any consideration and upon any terms and conditions
13 as the authority shall determine.

14 (5) To make contracts and guarantees and incur liabilities, borrow money at any rates of
15 interest as the authority may determine.

16 (6) To make and execute agreements of lease, conditional sales contracts, installment
17 sales contracts, loan agreements, mortgages, construction contracts, operation contracts, and other
18 contracts and instruments necessary or convenient in the exercise of the powers and functions of
19 the authority granted by this chapter.

20 (7) To lend money for its purposes, invest and reinvest its funds, and at its option to take
21 and hold real and personal property as security for the payment of funds so loaned or invested.

22 (8) To acquire or contract to acquire, from any person, firm, corporation, municipality,
23 the federal government, or the state, or any agency of either the federal government or the state,
24 by grant, purchase, lease, gift, condemnation, or otherwise, or to obtain options for the acquisition
25 of any property, real or personal, improved or unimproved, and interests in land less than the fee
26 thereof; and to own, hold, clear, improve, develop, and rehabilitate, and to sell, assign, exchange,
27 transfer, convey, lease, mortgage, or otherwise dispose or encumber that property for the
28 purposes of carrying out the provisions and intent of this chapter, for any consideration as the
29 authority shall determine.

30 (9) To conduct its activities, carry on its operations, and have offices and exercise the
31 powers granted by this chapter, within the state.

32 (10) To elect or appoint officers and agents of the authority, and define their duties and
33 fix their compensation.

34 (11) To make and alter bylaws, not inconsistent with this chapter, for the administration

1 and regulation of the affairs of the authority, and those bylaws may contain provisions
2 indemnifying any person who is or was director, officer, employee, or agent of the authority, or is
3 or was serving at the request of the authority as a director, officer, employee, or agent of another
4 corporation, partnership, joint venture, trust, or other enterprise, in the manner and to the extent
5 provided in section 7-1.2-814 of the business corporation act.

6 (12) To be a promoter, partner, member, associate, or manager of any energy project.

7 (13) To have and exercise all powers necessary or convenient to effect its purposes;
8 provided, however, that the authority shall not have any power to create, empower or otherwise
9 establish any corporation, subsidiary corporation, corporate body, any form of partnership, or any
10 other separate entity without the express approval and authorization of the general assembly.

11 **42-149-6. Additional general powers. -- In addition to the powers enumerated in section**

12 42-149-5, except to the extent inconsistent with any specific provision of this chapter, the
13 authority shall have power:

14 (1) To undertake the planning, development, construction, financing, management,
15 operation of any energy project, and all activities in relation thereto.

16 (2) To sell, mortgage, lease, exchange, transfer, or otherwise dispose of or encumber any
17 energy project, (or in the case of a sale, to accept a purchase money mortgage in connection with
18 any energy project) or to grant options for any purposes with respect to any real or personal
19 property or interest in real or personal property, all of the foregoing for consideration as the
20 authority shall determine. Without limiting the generality of the foregoing, the authority is
21 expressly empowered to lease or sell any part of the real or personal property associated with an
22 energy project owned or controlled by the authority to the state, or any department of the state or
23 to any municipality. The provisions of this section or of any other laws of this state (other than
24 this chapter) restricting the power of the state, its departments, or any municipality, to lease or
25 sell property, or requiring or prescribing publication of notice of intention to lease or sell,
26 advertising for bids, the terms of contracts of lease or sale, that would in any manner interfere
27 with the purpose of this section, which is to provide for the mutual cooperation by and between
28 the authority and the state, its departments or any municipality, to the fullest extent possible, are
29 not applicable to leases and sales made pursuant to this section.

30 (3) To prepare or cause to be prepared plans, specifications, designs, and estimates of
31 costs for the construction, reconstruction, rehabilitation, improvement, alteration, or repair of any
32 energy project, and from time to time to modify those plans, specifications, designs, or estimates.

33 (4) To manage any energy project, whether then owned or leased by the authority, and to
34 enter into agreements with the state or any municipality or any agency or their instrumentalities,

1 or with any person, firm, partnership, or corporation, either public or private, for the purpose of
2 causing any project to be managed.

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

9 (6) To engage the services of consultants on a contract basis for rendering professional
10 and technical assistance and advice, and to employ architects, engineers, attorneys, accountants,
11 construction, and financial experts and any other advisors, consultants, and agents as may be
12 necessary in his or her judgment, and to fix their compensation.

13 (7) To construct, acquire, own, repair, develop, operate, maintain, extend, and improve,
14 rehabilitate, renovate, furnish, and equip one or more energy projects and to pay all or any part of
15 the costs of these bonds and notes from the proceeds of bonds of the authority or from any
16 contribution, gift, or donation or other funds made available to the authority for those purposes.

17 (8) To fix, charge and collect charges for the use of any energy project and to alter and
18 investigate rates, and practices of charging, which affect energy projects so as to increase
19 commerce in the state.

20 (9) To establish by rule, in consultation with the office and the council, standards for
21 participation in renewable energy projects.

22 (10) To join NEPOOL, if the activities and projects of the authority require such
23 membership.

24 (11) To administer and manage the sale, including by auction, of greenhouse gas
25 allowances as provided for in chapter 23-82 and to hold and disburse the proceeds from such sale
26 or auction in the manner set forth in chapter 23-82.

27 (12) To trade in electric energy products beyond those that are necessary to accomplish
28 the purposes set forth in subsection 42-149-4(a), to the extent authorized by law, and subject to
29 the approval of the public utilities commission. By virtue of the provisions of this chapter the
30 authority shall be deemed to have the power to trade in energy products necessary to accomplish
31 the purposes set forth in subsection 42-149-4(a).

32 (13) To enter into long-term contracts: (a) with renewable energy suppliers; and (b) with
33 other energy suppliers with the approval of the public utilities commission.

34 (14) To enter into agreements, consistent with any renewable energy procurement and/or

1 investment plan adopted by the office, to provide support to renewable energy projects that meet
2 applicable standards established by the authority, in a manner that provides reasonable
3 opportunities for non-public ownership and financing of renewable energy projects.

4 (15) To apply for any or all permits necessary to develop or implement a renewable
5 energy project or other energy project that the authority is authorized to undertake.

6 **42-149-7. Directors, officers, and employees.** -- (a) The powers of the authority shall be
7 vested in a board of directors.

8 (1) The membership of the board shall consist of the commissioner of the office of
9 energy resources, who shall serve as chairman, and four (4) public members to be appointed by
10 the governor. In order to effectuate the purposes set forth in subsection 41-149-4(a), the
11 commissioner, in his capacity as head of the office of energy resources, may exercise the powers
12 of the authority until a quorum of the authority is duly appointed and qualified.

13 (2) Each gubernatorial appointee shall be subject to the advice and consent of the senate
14 and no one shall be eligible for appointment unless he or she is a resident of this state.

15 (3) It shall be the responsibility of the authority to conduct a training course for newly
16 appointed and qualified members within six (6) months of their qualification or designation. The
17 course shall be developed by the executive director of the authority or his or her designee, be
18 approved by the board, and conducted by the executive director or his or her designee. The board
19 may approve the use of any board or staff members or other individuals to assist with training.
20 The training course shall include instruction in the following areas: the provisions of the entirety
21 of chapter 64 of this title and of chapters 46 of this title, 14 of title 36, and 2 of title 38 of Rhode
22 Island general laws; and the board's rules and regulations. The director of the department of
23 administration shall, within ninety (90) days of the effective date of this act prepare and
24 disseminate materials relating to the provisions of chapters 46 of this title, 14 of title 36, and of
25 title 38.

26 (4) Public members of the board shall be removable by the governor, pursuant to the
27 provisions of section 36-1-7 and for cause only, and removal solely for partisan or personal
28 reasons unrelated to capacity or fitness for the office shall be unlawful.

29 (5) Annually during the month of January, the governor shall appoint a member or
30 members to succeed the member or members whose terms will then next expire to serve for a
31 term of four (4) years commencing on the first day of February and then next following, and
32 thereafter until the successors are appointed and qualified. The members of the board shall be
33 eligible to succeed themselves, but only upon reappointment and with senate advice and consent.

34 (6)(a) In the event of a vacancy occurring in the office of a member by death, resignation

1 or otherwise, that vacancy shall be filled in the same manner as an original appointment, but only
2 for the remainder of the term of the former member.

3 (b) The directors shall receive no compensation for the performance of their duties under
4 this chapter, but each director shall be reimbursed for his or her reasonable expenses incurred in
5 carrying out those duties. A director may engage in private employment, or in a profession or
6 business.

7 (c) Three (3) directors shall constitute a quorum and any action to be taken by the
8 authority under the provisions of this chapter may be authorized by resolution approved by a
9 majority of the directors present and entitled to vote at any regular or special meeting at which a
10 quorum is present. A vacancy in the membership of the board of directors shall not impair the
11 right of a quorum to exercise all of the rights and perform all of the duties of the authority.

12 (d) The chief executive officer of the authority shall be executive director of the authority
13 appointed by the governor with the advice and consent of the senate. The executive director of the
14 authority shall be entitled to receive for his or her services any reasonable compensation as the
15 board of directors may determine.

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

21 (f) Any action taken by the authority under the provisions of this chapter may be
22 authorized by vote at any regular or special meeting, and each vote shall take effect immediately.

23 All meetings shall be open to the public and all records shall be a matter of public record.
24 The authority shall be governed by the applicable provisions of chapters 38-2, 42-35 and 42-46 of
25 the general laws.

26 (g) Employees of the authority shall not, by reason of their employment, be deemed to be
27 employees of the state for any purpose, any other provision of the general laws to the contrary
28 notwithstanding, including, without limiting the generality of the foregoing, chapters 29, 39, and
29 42 of title 28 and chapters 4, 8, 9, and 10 of title 36.

30 **42-149-8. Appropriation and expenses.** -- The authority shall be self-funded through
31 revenues produced. However, the general assembly may annually appropriate any additional
32 sums that it may deem necessary to carry out the provisions of this chapter; and the state
33 controller is authorized and directed to draw his or her orders upon the general treasurer for the
34 payment of that sum, or so much as may be required from time to time, upon receipt by the

1 controller of properly authenticated vouchers.

2 **42-149-9. Relations with municipalities.** -- (a) The authority is authorized to plan,
3 construct, reconstruct, rehabilitate, alter, improve, develop, maintain, and operate projects in
4 conformity with the zoning or other land use ordinances, codes, plans, or regulations of any
5 municipality or political subdivision in which a project is located, subject to the provisions of
6 chapter 98 of title 42 of the Rhode Island general laws.

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

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

16 **42-149-10. Relations with energy facility sitting board.** – Energy projects of the
17 authority are subject to the provisions of chapter 98 of title 42 of the Rhode Island general laws.

18 **42-149-11. Relations with state agencies.** -- (a) In planning and carrying out projects
19 other than those subject to approval under the provisions of section 42-149-10, the authority shall
20 conform to the applicable provisions of the state guide plan as that plan may from time to time be
21 altered or amended, in the manner set forth in this section. In determining whether its proposed
22 projects are in conformity with the state guide plan, the authority and all persons dealing with it
23 shall be entitled to rely upon a written statement signed by its chairperson or vice-chairperson of
24 the state planning council to the effect that the proposed project conforms to the state guide plan.
25 If the authority shall submit to the state planning council a written request for this determination
26 accompanied by a general description of a proposed project describing in reasonable detail its
27 location, nature, and size, and the state planning council shall within forty-five (45) days after the
28 receipt of this written request issue its written statement to the effect that the proposed project
29 conforms or does not conform to the state guide plan as the case may be, then conformity of the
30 proposed project with the state guide plan shall be conclusively presumed. A written statement
31 issued by the state planning council to the effect that a proposed project does not conform to the
32 state guide plan shall state the respects in which conformity is lacking.

33 (b) In planning and carrying out projects, the authority shall conform to the applicable
34 provisions of chapter 23 of title 46.

1 (c) The authority is authorized and empowered to acquire and to dispose of real property,
2 subject to the provisions of this chapter, without the necessity of obtaining the approval of the
3 state properties committee or otherwise complying with the provisions of title 37.

4 **42-149-12. Bonds and notes of the authority.** -- (a) The authority shall have the power
5 and is authorized, through the economic development corporation with the approval of the
6 corporation, to issue from time to time its negotiable bonds and notes in one or more series in any
7 principal amounts as in the opinion of the authority shall be necessary to provide sufficient funds
8 for achieving its purposes, including the payment of interest on bonds and notes of the authority,
9 the establishment of reserves to secure those bonds and notes, and the making of all other
10 expenditures of the authority incident to and necessary or convenient to carrying out its corporate
11 purposes and powers.

12 (b) All bonds and notes issued by the authority may be secured by the full faith and credit
13 of the authority or may be payable solely out of the revenues and receipts derived by the authority
14 from its programs and/or projects.

15 **42-149-13. Authorization to accept appropriated moneys.** -- The authority is
16 authorized to accept any moneys as may be appropriated from time to time by the general
17 assembly for effectuating its corporate purposes including, without limitation, the payment of the
18 initial expenses of administration and operation and the establishment of reserves or contingency
19 funds to be available for the payment of the principal of and the interest on any bonds, notes or
20 other obligations of the authority.

21 **42-149-14. Assistance by state officers, departments, boards and commission.** -- (a)
22 All state agencies may render any services to the authority within their respective functions as
23 may be requested by the authority.

24 (b) Upon request of the authority the office of energy resources is authorized and
25 empowered to transfer to the authority any employees as it may deem necessary from time to time
26 to assist the authority in carrying out its functions and duties under this chapter. Employees so
27 transferred shall not lose their civil service status or rights.

28 **42-149-15. Annual financial reports and performance report.** -- The board shall
29 approve and the authority shall submit to the governor, the president of the senate, the speaker of
30 the house of representatives, and the secretary of state, within eleven (11) months after the close
31 of its fiscal year, complete and detailed financial reports and a performance report. These reports
32 shall be posted electronically on the general assembly and the secretary of state's websites as
33 prescribed in section 42-20-8.2.

34 (a) The financial reports shall set forth the authority's:

- 1 (1) operations;
- 2 (2) receipts and expenditures during the fiscal year in accordance with categories and
3 classifications established by the authority for its operating and capital outlay purposes including
4 a listing of all private consultants engaged by the authority on a contract basis and a statement of
5 the total amount paid to each private consultant, a listing of any staff supported by these funds,
6 and a summary of any clerical, administrative or technical support received;
- 7 (3) assets and liabilities at the end of its fiscal year including a schedule of its renewable
8 energy and other energy agreements, leases and mortgages and the status of the reserve, special or
9 other funds;
- 10 (4) schedule of the bonds and notes outstanding at the end of its fiscal year together with
11 a statement of amounts redeemed and incurred during the fiscal year; and
- 12 (5) The reports shall be prepared by independent certified public accountants in
13 accordance with generally accepted principles of accounting.
- 14 (b) The performance report shall include;
- 15 (1) a summary of performance during the previous fiscal year including
16 accomplishments, shortcomings in general and relative to plan, and actions to be taken to remedy
17 such shortcomings, and investments made in renewable energy projects;
- 18 (2) a summary analysis of the cost-effectiveness of renewable energy investments by the
19 authority and of all other energy initiatives and programs, and activities of the authority;
- 20 (3) for all board meetings and public hearings held by the authority; the subjects
21 addressed, decisions rendered, actions considered and their disposition; and, the minutes of these
22 meetings and hearings if requested by the governor, the president of the senate, the speaker of the
23 house of representatives, or the secretary of state;
- 24 (4) a summary of any training courses held pursuant to subdivision 42-149-7(a)(3); and
- 25 (5) a briefing on anticipated plans and activities in the upcoming fiscal year; and findings
26 and recommendations for improvements.

27 **42-149-16. Inconsistent provisions.** -- Insofar as the provisions of this chapter are
28 inconsistent with the provisions of any other law or ordinance, general, special or local, the
29 provisions of this chapter shall be controlling. The public utilities commission shall revise its
30 rules and regulations to take into account the legislative intent and purposes of this chapter and to
31 provide for orderly implementation of programs and activities subject to this chapter.

32 **42-149-17. Other statutes.** -- Nothing contained in this chapter shall restrict or limit the
33 powers of the authority arising under any laws of this state except where those powers are
34 expressly contrary to the provisions of this chapter; provided, however, that the authority shall not

1 have any power to create, empower or otherwise establish any corporation, subsidiary
2 corporation, corporate body, any form of partnership, or any other separate entity, without the
3 express approval and authorization of the general assembly. Except as otherwise provided, this
4 chapter shall be construed to provide a complete additional and alternative method for doing the
5 things authorized hereby and shall be regarded as supplemental and in addition to the powers
6 conferred by other laws. The issuance of all bonds, notes, and other obligations of the authority
7 under the provisions of this chapter need not comply with the requirements of any other statute
8 applicable to the issuance of bonds, notes and obligations, and contracts for the construction and
9 acquisition of any project undertaken pursuant to this chapter need not comply with any provision
10 of any other state law applicable to contracts for the construction and acquisition of state owned
11 property, except that the provisions of section 37-13-1 et seq. ("Labor and payment of debts by
12 contractors"); section 37-16-2 et seq. ("Public works arbitration"); and section 37-12-1 et seq.
13 ("Contractors' bonds") for the construction and acquisition of state or municipally owned property
14 shall be applicable. No proceedings or notice of approval shall be required for the issuance of any
15 bonds, notes and other obligations or any instrument of security except as provided in this
16 chapter.

17 **42-149-18. Construction.** -- This chapter, being necessary for the welfare of the state and
18 its inhabitants, shall be liberally construed so as to effectuate its purposes.

19 **42-149-19. Severability.** -- If any clause, sentence, paragraph, section, or part of this
20 chapter shall be adjudged by any court of competent jurisdiction to be invalid, that judgment shall
21 not affect, impair, or invalidate the remainder of the chapter but shall be confined in its operation
22 to the clause, sentence, paragraph, section, or part directly involved in the controversy in which
23 that judgment shall have been rendered.

24 SECTION 6. 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

- 1 This act would establish the Rhode Island power authority.
- 2 This act would take effect upon passage.

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LC01908
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