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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2011

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A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT -- INDUSTRIAL--  
RECREATIONAL BUILDING AUTHORITY

Introduced By: Senator Louis P. DiPalma

Date Introduced: April 14, 2011

Referred To: Senate Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 42-34-6 and 42-34-7 of the General Laws in Chapter 42-34  
2 entitled "Industrial-Recreational Building Authority" are hereby amended to read as follows:

3 **42-34-6. Definitions.** -- As used in this chapter, the following words and terms have the  
4 following meanings unless the context shall indicate another or different meaning or intent:

5 (1) (a) "Cost of project" means, in the case of an industrial project described in  
6 subdivision (3)(a), the cost or fair market value of acquisition, whichever is lower, or the cost of  
7 construction, alteration, reconstruction, expansion or rehabilitation of an industrial project by a  
8 local industrial development corporation or by a project owner, and in the case of an industrial  
9 project described in subdivision (3)(b), the cost of acquisition by a local development corporation  
10 or by a project owner. There may be included in cost of project the costs of all financing charges,  
11 existing encumbrances, interest during construction period, engineering, architectural and legal  
12 services, plans, specifications, surveys, cost estimates, studies, and other expenses as may be  
13 necessary or incident to the development, construction, financing, and placing in operation of an  
14 industrial project.

15 (b) "Cost of project" , in the case of a recreational project described in subdivision (4)  
16 means the cost or fair market value of new construction (including renovations or remodeling of  
17 existing structures if the authority determines that such renovation or remodeling adds fifty  
18 percent (50%) or more to the fair market value of the structure exclusive of the value of the land

1 upon which it rests [if any](#)), lands, property rights, machinery, easements, franchises, fixtures,  
2 financing charges, interest, engineering and legal services, plans, specifications, surveys, cost  
3 estimates, studies, and other expenses as may be necessary or incident to the development,  
4 construction, financing, and placing in operation of a recreational project; provided, however, that  
5 in the expense of any renovations or remodeling of existing structures shall not be included in  
6 "cost of project" to the extent that expense exceeds the fair market value of the structure  
7 (exclusive of the land upon which it rests [if any](#)) as so renovated or remodeled.

8 (2) "Federal agency" means and includes the United States of America, the President of  
9 the United States of America, and any department of, or corporation, agency, or instrumentality  
10 heretofore or hereafter created, designated, or established by the United States of America.

11 (3) (a) "Industrial project" means lands or buildings or other real estate improvements in  
12 Rhode Island, or any interest therein, acquired and constructed, reconstructed, improved,  
13 expanded, renovated, or rehabilitated by a local development corporation or by a project owner,  
14 together with all easements and other interests in the property, provided that the industrial project  
15 is to be used:

16 (i) By any industry for the manufacturing, processing, or assembling of raw materials or  
17 manufactured products, or

18 (ii) For the providing of research or warehousing facilities for the benefit of any such  
19 industry, or

20 (iii) An office and/or wholesale and/or retail facility, which facility is to be at least fifty-  
21 one percent (51%) owner-occupied, and provided further that the authority has determined that  
22 the industrial project or other real estate improvement will tend to provide gainful employment  
23 for the people of Rhode Island, or to prevent, eliminate, or reduce unemployment in Rhode  
24 Island, increase the tax base of the economy, diversify and expand industry so that periods of  
25 large scale unemployment and distressed times may be avoided, and generally benefit economic  
26 development in Rhode Island. An "industrial project" as defined herein may be located on leased  
27 land provided the term of the lease extends at least until the "maturity date", as defined in this  
28 section.

29 (b) "Industrial project" also means any machinery and equipment provided:

30 (i) The machinery and equipment has been acquired for use in connection with any  
31 building new or otherwise, or other real estate improvement in Rhode Island, used for the  
32 manufacturing, processing, or assembling of raw materials or manufactured products or for the  
33 providing of research facilities in connection therewith, furniture and/or fixtures, or used for  
34 office and/or wholesale and/or retail purposes in a facility which is at least fifty-one percent

1 (51%) owner-occupied;

2 (ii) The authority has determined that the machinery and equipment will tend to provide  
3 gainful employment for the people of Rhode Island or to prevent, eliminate, or reduce  
4 unemployment in Rhode Island, increase the tax base of the economy and diversify and expand  
5 industry so that periods of large scale unemployment and distressed times may be avoided, and  
6 generally benefit economic development in Rhode Island;

7 (iii) The owner therefore has agreed not to remove the machinery and equipment from  
8 the building or real estate improvement until the principal obligation of any mortgage on the  
9 machinery and equipment, the mortgage payments under which are insured by the authority  
10 pursuant to section 42-34-10, has been paid in full, except that the machinery and equipment may  
11 be removed from the building or real estate improvement with the prior written consent of the  
12 authority if such owner has agreed to substitute in place thereof other machinery and equipment  
13 approved by the authority and the mortgage within such reasonable period of time as the authority  
14 shall prescribe.

15 (c) An "industrial project" as defined herein shall cost more than one hundred thousand  
16 dollars (\$100,000); provided, however, where the authority commences to insure mortgage  
17 payments on an "industrial project" defined in subdivision (3)(b) at the same time as it  
18 commences to insure mortgage payments on an "industrial project" defined in subdivision (3)(a)  
19 it shall have the power to commence insuring mortgage payments on such "industrial project"  
20 defined in subdivision (3)(b) without limitation as to the minimum amount of one hundred  
21 thousand dollars (\$100,000) provided for herein.

22 (d) An "industrial project" under the provisions of subdivisions (3)(a) and (3)(b) may  
23 include a real estate improvement or machinery and equipment suitable for the abatement or  
24 control of industrial pollution to be used in connection with any buildings, real estate  
25 improvement, or machinery and equipment; provided, however, that the determinations under the  
26 provisions of subdivisions (3)(a) and (3)(b) of this section need not be made by the authority.

27 (4) "Recreational project" means any building, facility, development, or improvement in  
28 Rhode Island and the interest of the owner of such building, facility, development, or  
29 improvement in and to the land upon which it may be located, provided that the owner's interest  
30 be in fee simple or be a leasehold interest in land owned by the state of Rhode Island having a  
31 term expiring not less than ten (10) years after the date of recording the mortgage hereinafter  
32 defined, and provided the building, facility, development, or improvement is designed in whole or  
33 in part to attract tourists to this state and including, without limiting in any way the generality of  
34 the foregoing, marinas, [ships](#), beaches, bathing facilities, ski facilities, convention facilities,

1 hotels, motels, golf courses, camp grounds, arenas, theaters, lodges, guest cottages, and all types  
2 of facilities, and furniture and/or fixtures, related thereto as may be determined from time to time  
3 by the authority and which the authority has determined will contribute to the health and welfare  
4 of the people or will tend to improve the economy of the state, increase employment, or provide a  
5 wider tax base. A "recreational project" as defined herein shall cost more than twenty-five  
6 thousand dollars (\$25,000).

7 (5) "Industrial pollution" means any gaseous, liquid, or solid waste substance, or  
8 combination thereof, resulting from the operations of an industry referred to in subdivision (3)(a)  
9 of this section, which pollute the land, water, or air of Rhode Island.

10 (6) "Local development corporation" means any corporation or foundation organized and  
11 operated primarily for the purposes of fostering, encouraging, and assisting the physical location,  
12 settlement, and resettlement of industrial and manufacturing enterprises or recreational enterprise  
13 within the state or promoting the industry or recreational promotion of the state, including, for  
14 recreational purposes, the Rhode Island industrial facilities corporation no part of the net earnings  
15 of which inures to the benefit of any private shareholder or individual.

16 (7) "Maturity date" means the date on which the mortgage indebtedness would be  
17 extinguished if paid in accordance with periodic payments provided for in the mortgage.

18 (8) (a) "Mortgage" means for a subdivision (3)(a) or (3)(b) project above a first mortgage  
19 or security agreement on an industrial project creating and constituting a first lien of record,  
20 together with bonds, notes, evidences of indebtedness, or other credit instruments issued by a  
21 mortgagor to finance such project and secured thereby; provided, however, a first mortgage shall  
22 include a second or subsequent mortgage or security agreement on an industrial project if:

23 (i) The holder of such second or subsequent mortgage or security agreement is also the  
24 holder of a prior mortgage or security agreement on such industrial project under which prior  
25 mortgage or security agreement the authority is already insuring mortgage payments and;

26 (ii) No other person or legal entity holds an intervening mortgage, security interest or  
27 lien on such industrial project prior to such second or subsequent mortgage or security interest;  
28 and provided further, that "mortgage" shall also mean a second mortgage or security agreement  
29 that: (A) is issued by a project owner to a local development corporation; and (B) involves a  
30 principal obligation that does not exceed forty percent (40%) of the cost of project. Industrial  
31 projects described in subdivisions (3)(a), (3)(b), and (3)(d) may be financed and secured together  
32 if the requirements of section 42-34-10 are met.

33 (b) "Mortgage" means for the purpose of a subdivision (4) project above, a first  
34 mortgage [\(including a first preferred ship mortgage\)](#) on a recreational project together with bonds,

1 notes, evidences of indebtedness, or other credit instruments issued by a mortgagor to finance  
2 such project and secured thereby.

3 (9) "Mortgagee" means the original lender approved by the authority under a mortgage,  
4 and its successors and assigns and may include all insurance companies, trust companies, banks,  
5 building and loan associations, credit unions, savings and loan associations, investment  
6 companies, savings banks, local development corporations, individuals, executors, administrators,  
7 guardians, conservators, trustees, and other fiduciaries; including pension, retirement and profit-  
8 sharing funds; provided, however, that where there has been appointed a trustee under an  
9 indenture of trust or other similar document for the benefit of the holders of bonds or notes issued  
10 to finance an industrial project secured by a mortgage, "mortgagee" means such trustee. A local  
11 development corporation can be a second mortgagee only for a subdivision (3)(a) or (3)(b) project  
12 above if the second mortgage or security agreement is issued by the project owner to the local  
13 development corporation and the principal obligation of the second mortgage does not exceed  
14 forty percent (40%) of the cost of the project.

15 (10) "Project owner" means any business entity, other than a local development  
16 corporation, that owns an industrial project.

17 (11) "Mortgagor" means a local development corporation as defined herein.

18 (12) "Mortgage payments" means periodic payments by the mortgagor to the mortgagee  
19 required by the mortgage, and may include interest, installments of principal, taxes and  
20 assessments, land lease rentals, mortgage insurance premiums and hazard insurance premiums, or  
21 any of them as the authority may prescribe.

- 22 (13) "Ship" means a sailing vessel which is:  
23 (i) Over one hundred fifty feet (150') in length overall;  
24 (ii) Registered with the United States coast guard;  
25 (iii) Displaces at least four hundred fifty (450) registered tons; and  
26 (iv) Has its hailing port in Rhode Island.

27 **42-34-7. Powers.** -- The authority is authorized and empowered:

- 28 (1) To adopt bylaws for the regulation of its affairs and the conduct of its business;  
29 (2) To adopt an official seal and alter it at pleasure;  
30 (3) To maintain an office at such place or places within the state as it may designate;  
31 (4) To sue and be sued in its own name, plead and be impleaded; service of process in  
32 any action shall be made by service upon the manager of the authority either in hand or by  
33 leaving a copy of the process at the office of the manager with some person having charge  
34 thereof;

1 (5) To employ such assistants, agents and other employees as may be necessary or  
2 desirable for its purposes, all of whom shall be in the classified service of the state; to contract for  
3 and engage consultants; and to utilize the services of other governmental agencies;

4 (6) To accept from a federal agency, loans or grants for use in carrying out its purposes,  
5 and to enter into agreements with that agency respecting any such loans or grants;

6 (7) In connection with the insuring of payments of any mortgage, to request for its  
7 guidance a finding of the planning board of the municipality, or if there is no planning board, a  
8 finding of the municipal officers of the municipality, in which the industrial project is proposed to  
9 be located, or of the regional planning board of which the municipality is a member, as to the  
10 expediency and advisability of the project;

11 (8) To enter into agreements with prospective mortgagees and mortgagors, for the  
12 purpose of planning, designing, constructing, acquiring, altering, and financing industrial  
13 projects;

14 (9) To acquire, purchase, manage and operate, and hold and dispose of real and personal  
15 property, to take assignments of rentals and leases, and make and enter into all contracts, leases,  
16 agreements, and arrangements necessary or incidental to the performance of its duties;

17 (10) To enter into agreements with a mortgagee as to the manner of pursuing remedies in  
18 the event of a default and the application of any proceeds derived from those remedies against the  
19 authority's obligations to insure incurred under section 42-34-10, after determining that the  
20 agreements will, in the opinion of the authority, further the purposes of this chapter or protect the  
21 mortgage insurance fund. Any such agreement shall not operate so as to make any insurance  
22 issued under section 42-34-10 void or voidable;

23 (11) When in the opinion of the authority it is necessary or advisable, in order to further  
24 the purposes of this chapter or to safeguard the mortgage insurance fund, to purchase, acquire,  
25 take assignments of notes, mortgages, and other forms of security and evidences of indebtedness,  
26 to purchase, acquire, attach, seize, accept, or take title to any industrial or recreational project by  
27 conveyance or when an insured mortgage thereon is clearly in default, by foreclosure, and to sell,  
28 lease, or rent an industrial or recreational project for a use specified in section 42-34-6, or for any  
29 other use;

30 (12) To exercise all of the powers which a private insurance company engaged in the  
31 business of insuring mortgages would have, to the extent that those powers are not inconsistent  
32 with the provisions or purposes of this chapter;

33 (13) To report annually to the governor and the general assembly as to the activities of  
34 the authority for the previous fiscal year;

1           (14) To do all acts and things necessary or convenient to carry out the powers expressly  
2 granted in this chapter; provided, however, that in all matters concerning the internal  
3 administrative functions of the authority the purchasing procedures of the state relating to office  
4 space, supplies, facilities, materials, equipment, and professional services, shall be followed;

5           (15) To determine whether or not a building facility, development, or improvement and  
6 the land upon which it is located, if any, is or will constitute a recreational project. Any  
7 determinations made by the authority under this subdivision and subdivision (16) of this section  
8 shall be deemed final and conclusive and not subject to review directly or indirectly;

9           (16) To determine whether or not such a project will tend to accomplish the purposes of  
10 this chapter;

11           (17) To do all acts and things necessary or convenient to carry out the powers expressly  
12 granted in this chapter; provided, however, that in all matters concerning the internal  
13 administrative functions of the authority the purchasing procedures of the state relating to office  
14 space, supplies, facilities, materials, equipment, and professional services, shall be followed.

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

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF

A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT -- INDUSTRIAL--  
RECREATIONAL BUILDING AUTHORITY

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1           This act would define “ships” and would include the term in the definition of  
2 “recreational project,” with the intent to include water-based projects and attract tourists to Rhode  
3 Island. It would also authorize the industrial recreational building the authority to insure first  
4 mortgages on such projects.

5           This act would take effect upon passage.

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