

2020 -- S 2194

LC004090

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2020

A N A C T

RELATING TO WATERS AND NAVIGATION -- THE OCEAN STATE CLIMATE
ADAPTATION FUND

Introduced By: Senators Lynch Prata, Pearson, Euer, Valverde, and Coyne

Date Introduced: February 04, 2020

Referred To: Senate Environment & Agriculture

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 46 of the General Laws entitled "WATERS AND NAVIGATION" is
2 hereby amended by adding thereto the following chapter:

3 CHAPTER 23.3

4 THE OCEAN STATE CLIMATE ADAPTATION AND RESILIENCE FUND

5 **46-23.3-1. Legislative findings and purpose.**

6 The general assembly hereby finds and declares that:

7 (1) The production, transport and use of fossil fuels have significant impacts on the
8 environment.

9 (2) The impacts of climate change upon Rhode Island's built and natural environments
10 are wide-ranging, discernible and documented, and, in many cases growing in severity and
11 include sea level rise, coastal erosion, increased precipitation, flooding and storm surge.

12 (3) As of 2016, the range in sea level rise change is projected by the National Oceanic
13 and Atmospheric Administration to be a maximum of approximately one foot (1') in 2035, two
14 feet (2') in 2050 and up to nine feet (9') by 2100.

15 (4) Annual precipitation has increased by two inches (2") since 1950 and more intense
16 rainfall is flooding low-lying areas and threatening public infrastructure.

17 (5) Climate change has and will continue to pose significant risks for state and municipal
18 infrastructure and our environment, public health, welfare, and economic well-being.

1 (6) Providing areas for coastal and estuarine habitats to migrate is essential to preserving
2 coastal and marine wildlife resources.

3 (7) Ecosystem services that natural environments provide, such as dampening of wave
4 energy and flood storage are at risk due to climate change, and protecting natural systems is vital
5 to protecting built infrastructure and is cost effective.

6 (8) Rhode Island infrastructure is at risk and the state must begin to plan and implement
7 projects to adapt to changing conditions.

8 (9) Reducing the vulnerability of our infrastructure is vital to the economic prosperity and
9 quality of life of the citizens of the state.

10 (10) The state, cities, and towns, need a dedicated, long-term source of funding to assist
11 in implementing projects to address the impacts of climate change.

12 (11) The purpose of this chapter is to create the Ocean State Climate Adaptation and
13 Resilience (OSCAR) fund as a dedicated long-term source of grant funds to enable cities and
14 towns to implement projects that restore and improve the climate resilience of vulnerable coastal
15 habitats, as well as river and stream floodplains with priority to projects that improve community
16 resilience and public safety.

17 **46-23.3-2. Definitions.**

18 For the purposes of this chapter, the following words and phrases shall have the
19 following meanings:

20 (1) "Adaptation and resilience projects" means those projects on public land that protect
21 or enhance coastal or riverine habitats, and are proposed in response to climate change impacts.
22 Adaption and resilience projects include those projects that reduce the vulnerability of low-lying
23 infrastructure on public land through measures that include removal and relocation of
24 infrastructure, restoration of river and stream floodplains, including regrading of banks,
25 revegetation, acquisition of that area of land necessary to maintain and preserve public access,
26 and redesigning, resizing and replacing culverts and bridge spans at existing wetland crossings.

27 (2) "Climate change impacts" in Rhode Island means and includes, but are not limited to,
28 flooding, erosion, sea level rise, and storm surge.

29 (3) "Council" means the coastal resources management council.

30 (4) "Department" means the department of environmental management.

31 (5) "Director" means the director of the department of environmental management.

32 (6) "Infrastructure" means and includes roads, parking lots and other paved surfaces,
33 shoreline protection structures, buildings, water control structures, culverts, other structures and
34 remnants of development.

1 (7) "Public land(s)" means property owned by state or municipal governments, public and
2 private lands dedicated to public use, including lands that provide access to shorelines and
3 riverbanks. Public lands include properties where the state or municipality holds an easement for
4 public purposes.

5 (8) "Shoreline protection structures" means and includes revetments, bulkheads, seawalls
6 and floodwalls, breakwaters, jetties, and other structures, the purpose or effect of which is to
7 control the erosion of coastal or river features, and includes any sheet pile walls, concrete or stone
8 walls.

9 **46-23.3-3. Technical advisory committee.**

10 There is hereby established a technical advisory committee consisting of seven (7)
11 members as follows: one member shall be the director of Save the Bay, or designee; one member
12 shall be the director of the University of Rhode Island School of Oceanography, or designee; one
13 member shall be the director of the Ocean Project, or designee; one member shall be the director
14 of the department of environmental management, or designee; one member shall be the director
15 of the coastal resources management council, or designee; one member shall be the director of the
16 state planning council within the department of administration, or designee; and one member
17 shall be the director of the Rhode Island emergency management authority, or designee. The
18 technical advisory committee shall serve as an advisory board to the department, council and the
19 program staff throughout this process.

20 **46-23.3-4. Establishment - The ocean state climate adaptation and resilience fund.**

21 (a) Establishment. There is established within the coastal resources management council,
22 the Ocean State Climate Adaptation and Resilience fund (the "OSCAR fund").

23 (b) Financing. The fund shall consist of the following sources:

24 (1) Sums the general assembly may appropriate;

25 (2) Monies received from Federal, state, or other sources, including bond funds, for the
26 purpose of climate adaptation;

27 (3) Monies received from any private donor for the OSCAR fund;

28 (4) The fees required pursuant to § 46-23.3-7; and

29 (5) Any interest earned on the monies in the fund.

30 (c) Allocation of OSCAR funds. OSCAR funds shall be used to carry out the purposes of
31 this chapter as follows:

32 (1) The administrative expenses required to carry out the activities of the program as
33 described in this chapter not to exceed fifty thousand dollars (\$50,000) per agency. The
34 department and the council shall be responsible for submitting annual budget requests for its

- 1 administrative and implementation costs of the program;
- 2 (2) The planning and design, engineering, construction, and monitoring of adaptation
3 projects as described in this chapter; and
- 4 (3) The OSCAR projects approved by the department and the council upon
5 recommendation of the technical advisory committee. Only grants approved through the process
6 established by the agencies shall be eligible for funding under this program.
- 7 (d) OSCAR fund grants. Factors to be taken into consideration by the technical advisory
8 committee for the purposes of granting monies to municipalities and the state for OSCAR grants,
9 determining the eligibility of projects for financial assistance, and in prioritizing the selection of
10 projects by the technical committee shall include, but need not be limited to:
- 11 (1) Consistency with the following where applicable: the council's most recent
12 projections for sea level rise, the coastal habitat restoration strategy, the state nonpoint pollution
13 control plan and other applicable state and federal laws.
- 14 (2) The ability and authority of the applicant to carry out and properly maintain the
15 adaptation project;
- 16 (3) Whether the project will enhance public access;
- 17 (4) The severity to, or the risk and/or extent of, infrastructure degradation on public land;
- 18 (5) The extent of the use by the public of the land;
- 19 (6) The proposed milestones to ensure that the project is completed as designed and
20 approved;
- 21 (7) Whether the adaptation project can also be shown to create or replace habitat losses
22 that benefit fish and wildlife resources;
- 23 (8) Potential water quality improvements;
- 24 (9) Potential improvements to fish and wildlife habitats for species which are identified
25 as rare or endangered by the Rhode Island natural history survey or the Federal Endangered
26 Species Act [16 U.S.C. § 1531 et seq.];
- 27 (10) The level and extent of collaboration by partners (e.g., municipality, nongovernment
28 organization, watershed council, federal agency, etc.); and
- 29 (11) Overall potential benefits to the public and estimated length of time frame of benefit.

30 **46-23.3-5. Eligible and ineligible projects.**

31 (a) Funds in the Ocean State Climate Adaptation and Resilience (OSCAR) fund shall be
32 used solely for adaptation projects as defined in § 46-23.3-2(1).

33 (b) The OSCAR fund shall not be used for:

34 (1) Mitigating any current, planned or future projects that degrade, fill, or otherwise

1 destroy coastal, estuarine, or riverine habitats;

2 (2) Fulfilling any liability for restoration required by any local, state or federal agency
3 pursuant to an environmental or public health enforcement action;

4 (3) With the exception of culverts as specifically described in § 46-23.3-2(1), elevating,
5 repairing or replacing infrastructure, or constructing new infrastructure, in its existing location
6 that is experiencing climate change impacts as defined in § 46-23.3-2(2);

7 (4) Constructing new, or repairing existing shoreline protection structures; provided,
8 however, that existing shoreline protection structures on public parks may be repaired; and/or

9 (5) Constructing roads or bridges.

10 **46-23.3-6. Disbursement process and reporting.**

11 (a) The department and the council shall establish and execute an annual process for the
12 solicitation, evaluation and award of grants for projects that meet the requirements set forth in in
13 this chapter.

14 (b) The department and the council shall submit a report to the speaker of the house of
15 representatives and the president of the senate not later than the tenth day following the
16 convening of each regular session of the general assembly. The report shall include the following:

17 (1) The amount of money awarded from the OSCAR fund during the preceding fiscal
18 year;

19 (2) A brief summary of the projects that received funding and a timeline of
20 implementation; and

21 (3) Any other information requested by the general assembly.

22 (c) Nothing contained in this chapter is intended to abrogate or affect the existing powers
23 of the department of environmental management or the coastal resources management council.

24 **46-23.3-7. Uniform climate change adaptation fee.**

25 (a) A uniform climate change adaptation fee in an amount not exceeding five cents (\$.05)
26 for each barrel of petroleum products, as set by the director pursuant to subsection (d) of this
27 section, shall be imposed upon every person owning petroleum products at the time the petroleum
28 products are received at a marine terminal within this state by means of a vessel from a point of
29 origin outside this state. The fee shall be remitted to the division of taxation on the thirtieth day of
30 each month based upon the number of barrels of petroleum products received during the
31 preceding month.

32 (b) Every owner of petroleum products shall be liable for the fee until it has been paid to
33 the state, except that payment to a marine terminal operator registered under this chapter is
34 sufficient to relieve the owner from further liability for the fee; provided, however, that the fee for

1 asphalt products and asphalt derivatives shall be one cent (\$.01) per barrel of asphalt products or
2 derivatives.

3 (c) Whenever the director, in consultation with the department and the division of
4 taxation, estimates that the amount in either fund will reach the amount specified in subsection (e)
5 of this section, and the money in the fund is not required for the purposes specified in § 46-23.3-
6 1, the director shall instruct the division of taxation to cease collecting the fee.

7 (d) The division of taxation, except for the fee set out in subsection (b) of this section,
8 shall not set the amount of the fee at less than five cents (\$0.05) for each barrel of petroleum
9 products or crude oil, unless the director finds that the assessment of a lesser fee will cause the
10 fund to reach the designated amount within six (6) months.

11 (e) For the purposes of this chapter, "designated amount" means an amount equal to ten
12 million dollars (\$10,000,000), adjusted for inflation after January 1, 2021, according to an index
13 which the director may reasonably choose.

14 (f) All fees collected pursuant to this section shall be deposited in the Rhode Island
15 Climate Change and Adaptation fund, and shall be disbursed according to the purposes expressed
16 in §46-23.3-1.

17 **46-23.3-8. Regulations.**

18 The council and the director shall adopt all rules and regulations necessary for the
19 administration and enforcement of this chapter.

20 SECTION 2. This act shall take effect on July 1, 2021.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO WATERS AND NAVIGATION -- THE OCEAN STATE CLIMATE
ADAPTATION FUND

1 This act would establish the Ocean State Climate Adaptation and Resilience Fund.
2 The fund would enable cities, towns and the state to apply for grants to fund projects that
3 restore and improve the climate resilience of vulnerable coastal habitats, as well as river and
4 stream floodplains with priority to projects that improve community resilience and public
5 safety.

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